

(2003) 10 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 506 of 2003

Emna (Smt.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Bikaner Army Pension and Gratuity Rules — Rule 42, 43
Medical Services of the Armed Forces Regulations, 1983 — Regulation 423
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2004) 4 RLW 2198 : (2004) 1 WLC 442

Hon'ble Judges : Shiv Kumar Sharma, J; Khem Chand Sharma, J

Bench : Division Bench

Advocate : Shyam Singh, for the Appellant; Sanjay Pareek, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Writ petition filed by the appellant for grant of disability and special family pension was dismissed by the learned Single Judge vide order dated April 16, 2003. Against this order that the instant appeal has been preferred by the appellant.

2. Contextual facts depict that husband of appellant late Sakuria was enrolled in Sadul right infantry of Erstwhile Bikaner State Forces on November 1, 1938 in medical category A. At the time of enrollment Sakuria was fully fit and did not suffer from any disease. He fought during Second World War for five years from November 17, 1942 to December 17, 1945 and was awarded HH's Accession Medal 1943. War Medal, Defence Medal and Indian Independence Medal. On Independence the Unit of petitioner was merged with the Rajasthan State Forces and later with the Rajput Regiment of the Indian Army. While serving on Indo-Pak boarder the petitioner suffered wounds and lost vision in left eye and invalidated out of service on recommendation of the Medical Board on January 27, 1953 after 14 years 2 months and 27 days service due to disability Amblyopia Exnopsia left eye as per details given in paras No. 3 and 5 (c) of his discharge

certificate appended as Annexure-1 with the writ petition as well as serial No. 23 of extract of long roll Annexure-1. The disability of Sakuria was directly attributable to Military service as 50% as per serial 6 of Schedule of disabilities and he was fully entitled for grant of disability pension as per Rules 42 and 43 of the Bikaner Army Pension and Gratuity Rules. The petitioner averred that the liability for payment of pension for State Forces was taken over by the Government of India with effect from April 1, 1950. Therefore, he was entitled for grant of disability pension as per regulation 173 of the Pension Regulations. Shri Sakuria's service and medical documents were prepared and forwarded to the Record Officer on his discharge as per Regulation 623 of Regulations for Army. After coming to know that similarly placed persons have been granted disability pension Sakuria approached the Bikaner District Ex-servicemen League for help, who took up his case with the higher authorities. Shri Sakuria was informed vide letter dated May 19, 1997 that his disability pension claim was rejected vide letter dated February 14, 1953. The respondents were requested to grant disability pension under the Rules 42, 43 and Item No. 6 of the Schedule to the Bikaner Army Pension Rules vide letter dated December 11, 1998 but no action was taken and Sakuria died on September 21, 2001. The appellant thereafter served legal notice on July 12, 2002 and filed writ petition on August 8, 2002, which was dismissed by the learned Single Judge as indicated herein above.

3. We have heard the rival submissions and scanned the material available on record.

4. Regulation 53 of the Pension Regulations for the Army provides that pension shall be payable for life. Regulation 83 mandates that (a) first claims for pension or allowance and claims for gratuity preferred within 12 months of the date on which they fall due shall be entertained and paid with full arrears, (b) those which are not preferred within that period may be admitted with full arrears, if the concerned sanctioning authority is satisfied with the claimant's explanation for the delay, if he is not satisfied with the explanation or claims shall be submitted for orders to the Government. According to Regulation 90 term "claimant" used in Regulation 83 shall mean "Record Officer". Thus the Record Officer had to prefer the claim for pension of claimant and not the claimant. In *Devki Nandan Prasad v. State of Bihar* (1), their Lordships of the Supreme Court propounded that the pension is not a bounty payable on the sweet will and pleasure of the Government and the right to pensioner is a valuable right vesting in the Government servant. The grant of pension does not depend upon an order being passed by the authorities but right to receive pension flows to the employee not because of the said order but by virtue of the Rules. The object behind grant of pension is to further socioeconomic justice. A retired employee has to be properly looked not on the ground of charity but on the basis of his legal and constitutional rights. Pension is not a gratuitous payment but a deferred wage payment which can legally be enforced. The court must adopt a liberal and progressive approach in interpreting the Rules providing for grant of

pensionary benefits.

5. The core question that requires our consideration is whether late husband of appellant was invalided out from service due to disability from service attributable to Military service and the appellant is entitled to disability as well as special family pension? Relevant statutory provisions that require to be noticed are para 423 (c) of the Regulations of the Medical Services of Armed Forces Act, Regulations 173 of the Pension Regulations and Rule 7(b) of Appendix II to Pension Regulations.

6. Regulation 173 of Pension Regulations reads thus:

"Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 50% or over."

7. Rule 7(b) of Appendix II (Entitlement Rules) reads as under:-

"(a) In respect of disease, the following rules shall be observed-

(b) A disease which has led to an individual discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion hold, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

8. Clause (c) of para 423 of the Regulations of the Medical Services of Armed Forces Act provides thus:-

"(c) The cause of disability or death resulting from a disease as attributable to service when it is established that the disease arose during service on the conditions and circumstances of the disease, cases in which it is established that the service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

9. A close look at the aforequoted provisions demonstrates that if no note of disease was made at the time of individual's acceptance for Military Service or no note of it was made at the time of his discharge that the disease was such as could not have been detected on medical examination prior to his acceptance for service, the disease will be deemed to have arisen during service.

10. From document Annexure 1 appended to the writ petition it is established that late Shri Sakuria was invalided out of service on recommendation of the

Medical Board on January 27, 1953 after 14 years 2 months and 27 days service due to disability Amblyopia Exnopsia as per the details given in para No. 3 and 5(c) of the said discharge certificate as well as at serial No, 23 of extract of Long Roll also corroborates this fact. The disability of Shri Sakuria was attributable to Military service and was assessed as 50% as per serial 6 of Schedule of disabilities and he was fully entitled for grant of disability pension as per Rules 42 and 43 of the Bikaner Army Pension and Gratuity Rules as well as Regulation 173 of the Pension Regulations. It is also established from record that till his death late Shri Sakuria had continuously approached various authorities for grant of pension but no heed was paid. Learned Single Judge observed in the impugned judgment that after a lapse of more than 40 years more so when the record has been destroyed in 1979, no relief could be grant to the appellant. We find ourselves unable to agree with the observations of learned Single Judge. Their Lordships of the Supreme Court in Madan Singh Shekhawat v. U.O.I. (2), propounded that on the ground of delay and latches pension claim cannot be denied.

11. We see no reason to disbelieve the documents appended with the writ petition. The respondents have also not challenged the authority of the said documents. Therefore even if the record was destroyed in 1979, this fact itself hardly affects the claim of the petitioner. In respect of observation of learned Single Judge that "sympathies do not make good law", we would only like to refer Gurdial Singh v. Union of India (3), wherein Hon"ble Supreme Court indicated that in pension matters, liberal and not a technical approach is required to be followed.

12. On a close scrutiny of the material on record we are satisfied that the cause of disability that led to discharge of the husband of the appellant from the service, had arisen while in service and there is no evidence to show that he had been involved with any disability prior to his joining the Army service therefore he was entitled to disability pension as the disability was attributable to Military Service. The act of respondents in declining the pension claim of the husband of the appellant and after his death special family pension to her was illegal.

13. For the reasons aforementioned we allow the appeal and set aside the impugned judgment of learned Single Judge. We direct the respondents to grant the benefit of disability pension to the husband of the appellant and special family pension after his death to the appellant in accordance with law. Compliance of this order shall be ensured within four months of the production of certified copy of this order and the payment arrears shall be made to the appellant within next one month failing which the appellant shall be entitled to the interest on the arrears @ 12% per annum with effect from April 1, 2004. There shall be no order as to costs.