
(2010) 12 DEL CK 0285

In the Delhi High Court

Case No : Writ Petition (C) No. 3119 of 1997

Ex. CPL. Ashok Kumar

APPELLANT

Vs

A.F.G.I.S. and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2010) 12 DEL CK 0285

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : D.V.S. Yadav, for the Appellant; J.S. Arora, for Respondent No 1, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The Petitioner was enrolled as Airman with the Indian Air Force on 24th July, 1981 and posted at the strength of No. 24 Equipment Depot A.F. Manori, C/o 56 APO. On 28th August, 1994, the Petitioner was on duty at the guard room. Air Force officers had made a deer park near the main guard room, where officers use to go for picnic with the family and play with deer. The Petitioner heard the noise "Bachao-Bachao" (save-save) whereupon he noticed a violent deer attacked an officer. The Petitioner tried to save the officer, whereupon the deer attacked him resulting in head injury. The Petitioner was taken to hospital, where he remained under treatment for several months and lost one eye.

2. Upon his discharge, a medical Board was conducted on the 23rd of December, 1995 to evaluate the Petitioner's medical fitness which had opined as follows :

This 33 years old NCO sustained Deer gore injury while on duty at main Guard Room on 28.8.94 and was managed at MH Allahabad and transferred to CH(CC) Lucknow. He was diagnosed as above and placed in low medical category CEE (T.24) for DIS No. 1 and for DisNo.II he was placed in CEE(P) wef 14.12.94. He

was due for recategorisation in June 95 for which he was admitted at this sick quarters on 15.6.95 and further transferred to CH(CC) Lucknow on 17.6.95 for opinion of Neurosurgeon and finally discharged from sick Qurs on 22.6.95. He was last reviewed by the Neurosurgeon on 19.6.95 at CH(CC) Lucknow and recommended to continue in low Medical category CEE (T-24) for Dis-I. Now reported for review/recategorisation for both disability.

3. The Petitioner was earlier medically examined on 14th December, 1994 also when evaluation of 40% of disability was arrived at by the Board. It was also held by the medical board that the Petitioner's disability was directly attributable to his service.

4. Mr. D.V.S. Yadav, learned Counsel for the Petitioner has contended that Petitioner was working in the Air Force Police and on account of the injuries which resulted in disability, he was unable to effectively perform his duty. In this background, the Respondents had offered a lower trade of Catering Assistant to the Petitioner which was not acceptable to him. The Petitioner places reliance in this behalf on the proceedings of the medical board which was held on 23rd December, 1995 whereby the Petitioner was medically re-categorized and placed in lower medical category CEE (P). In this background, the Petitioner was discharged on 31st August, 1996 on medical grounds with disability assessed at 40% by the Air Force. As noticed above, this disability has been held to be attributable to the Air Force service.

5. It is the Petitioner's contention that in fact the Petitioner's disability evaluation should have been at 100%. However, for the purpose of the present writ petition, we are not required to go into this contention of the Petitioner. Be that as it may, the primary contention of the Petitioner is that in case an Airman is discharged from the service on medical ground and his disability is evaluated at 40% or more, he becomes entitled to the benefit of the Air Force Group Insurance Scheme. The Petitioner has complained that he has been illegally deprived of the benefit of such scheme.

6. The Respondents have contested the Petitioner's prayer for grant of the benefit of such insurance scheme on the ground that he was discharged from service on his own request before completion of the prescribed service/age limit and consequently he is not entitled to the benefit of this scheme.

It has been contended that the Petitioner was not discharged after holding an Invalidating Medical Board but after his medical examination by a Released Medical Board.

7. In support of the claim, the learned Counsel for the Petitioner has placed reliance on the pronouncement of this Court titled Baljor Singh Vs. Union of India, . We find that in this case also, the Petitioner as Ex. Subedar of the army, had voluntarily proceeded on discharge after being placed in a lower medical category and he had refused to accept the sheltered appointment which was offered to him. He had filed the writ petition seeking entitlement to disability

pension as well as benefit of the Army Group Insurance. In similar facts, this Court had sustained the Petitioner's claim. To the extent necessary, the relevant paragraphs of this judgment may usefully be considered in extenso and read as follow :

(5) The Petitioner further alleged that he kept on performing his duties and discharging the work to the entire satisfaction of his seniors despite the fact that he used to experience difficulty in the discharge of his duties due to recurring pain in his amputated leg but he never complained about his difficulties to any one. It is further alleged that due to some unknown reasons the O.C. Section Major Eisenhower started harassing him. (We need not enter into this controversy and for that reason need not notice the allegations made by the Petitioner against the O.C. Section since the said officer is not a party to this petition). The Petitioner was deputed to perform night duties. The Petitioner expressed his difficulties of recurring pain due to continuous use of artificial limb on his right leg. The attitude of the Officer-in-charge of the section towards him was not favourable. The Petitioner, thereafter sought exemption from night duty. His application was duly recommended by the J.C.O. in charge Section on 31.3.1994 but his request was turned down without giving even an opportunity of being heard. When the Petitioner found the atmosphere to be uncongenial and unfavourable, he was left with no other option except to make a request for his pre-mature retirement on the basis of application (annexure- P.8) on medical grounds as per the dictates of his O.C. Section on 30.3.1994.

(6) It is the Petitioner's case that his request for discharge on medical grounds was duly recommended by the Commanding Officer and he was discharged from service w.e.f. 31.8.1994 in terms of Rule 13(3) item (i)(b) of the Army Rules. According to the Petitioner, he ought to have been discharged under the provisions of the Ministry of defense letter dated 10.5.1977, attached as appendix "A" to Army Order 46/80 (annexure-P.5) on medical grounds. The Petitioner thereafter applied for being granted his full service pension as well as disability pension and the benefits under the Army Group Insurance Scheme, but his claim for the last two benefits was rejected through the impugned orders on the ground that since the Petitioner had been discharged from service under the aforementioned rule on his own request before completion of the prescribed service/age limit, he is not entitled to disability pension and the benefits under the Scheme.

(17) It is not disputed that had the sheltered appointment not been provided to the Petitioner, he in terms of letter dated 20.8. 1982 would have been discharged by 10.1.1994, namely, within a period of six months from the date of his being placed in low medical category (permanent). As the Petitioner was retained in service in public interest, in terms of Government of India letter dated 10.5.1977, he was to be retained so long the sheltered appointment was available. He could have declined the sheltered appointment, when offered to him. It was not done. The Petitioner did not express his unwillingness to serve

and thus continued to serve but had ultimately to pray for being discharged. It was done by moving an application, which reads :

I have the honour to state that I am handicapped (Rt leg below knee) JCO. My right leg was amputated at Base hospital Lucknow on 08 Feb 93 and till today I am not feeling comfortable due to pain at my right leg. It is an obstacle to discharge my duties. Therefore, I request you please grant me premature retirement.

(18) Having once acquired the eligibility for being granted the disability pension and disability benefits at a stage when the Petitioner was placed in low medical category (permanent), he could not have been denied the benefit of the same in case he sought and was allowed discharge later on due to the same ailment due to which he was placed in low medical category. Army Order 146/77 do suggest that category "C" Jco embraces all personnels, who are not fit for active service with units/formation Head Quarter involved in actual fighting but are fit for such duties which do not involve severe strain. On the day when the above request was made, the Petitioner had made a request for exemption to perform night duty because of his medical condition. The application dated 30.3.1994, in which he sought exemption stated that being handicapped, the doctors had placed him in low medical category and that the artificial limb cannot be worn by him for more than an hour, as such he was having constant pain in amputated right leg. When this request was not acceded to, which could have been allowed had instructions contained in Army Order 146/77 been correctly followed. Faced with this situations, the Petitioner was left with no other option except to move an application for discharge on medical ground, which was also recommended on medical grounds by the Commanding Officer in the following words :

1. JC-13449K Sub (Trlr) Baljor Singh of this unit met with an Mt accident on 02 Feb 93 and was hospitalised. The Rt. leg (below knee) of the Jco was amputated at Base Hosp Lucknow on 08 Feb 93. The Jco was given an Artificial Limb and was placed in low med cat Cee (Permt) wef 10 Feb 93. There is no specific restrictions advised on the employability by the med auth except those specified under Ao 146/77.

2. The Jco has put an application for premature retirement from service on med grounds. The Jco is due for normal retirement in Mar 2003.

3. I have personally known the actual facts of the case of the Jco as he is not feeling comfortable due to recurring pain at his right leg.

4. Under these circumstances, having fully weighed the pros and cons of the case, the premature dish of this Jco from service is strongly recommended.

Station: C/o 56 Apo

Dated: 19 Apr 94

sd/-

(J.S. Brar)

Lt. Col Commanding Officer.

(19) It was on the aforementioned recommendation that the Petitioner was discharged. The discharge of the Petitioner, may be on his own request, in the circumstances aforementioned above has to be treated as a discharge due to medical grounds, during the extended period of retention. It was not due to any other reason, but was due to medical grounds. Had it been on any other ground other than medical grounds, the Petitioner would not be entitled to any relief. It was because of low medical category (permanent) that the Petitioner was unable to discharge the duties during the extended period of service due to the duties. performance of which involved stress and strain not commensurate with the medical category of the Petitioner. When discharge was sought on medical grounds and it was recommended also on medical grounds, such discharge has to be treated as a discharge on medical grounds. May be that for that purpose the Petitioner submitted his request, which was duly recommended by the Commanding Officer that it was because of the medical condition of the Petitioner as a direct result in the injuries sustained by him.

(20) In view of the above, the impugned orders, which proceeds on the basis that it was a implicate voluntary discharge and not discharge on medical grounds, being bad in law are liable to be quashed and set aside. Consequently, the writ petition is allowed. The impugned orders are quashed and set aside. The Petitioner is held entitled to the disability pension and the disability cover under A.G.I. Scheme w.e.f. 31.8.1994, the date of the Petitioner's discharge from service on medical grounds, in addition to the normal service pension. Respondents will work out the arrears becoming due and payable to the Petitioner and will pay the same to the Petitioner within a period of three months from the date of the receipt of writ order from the Court.

8. It is undisputed that the scheme of grant of Group Insurance to Air Force personnel is similar to the scheme for such insurance which applies to the army personnel. Just as Ex. Subedar Baljor Singh (Supra), the present Petitioner also refused the sheltered appointment. It remains a fact that the Petitioner was compelled to seek discharge on the ground of disability which he suffered because of injuries which was attributable to his military service. The provisions of the scheme as well as rules and regulations have to be rationally and reasonably construed and implemented so that the benefit of the welfare scheme is made available to genuinely deserving cases. The injuries suffered and resultant disability was attributable to his military service. In view thereof, it has to be held that it is immaterial as to whether the final order of discharge was simplicitor voluntary discharge or it was stated to be a discharge on medical grounds.

9. We find that the case of the Petitioner is squarely covered by the judgment in Ex. Subedar Baljor Singh (Supra) case and the Petitioner is entitled to benefit of

the Air Force Group Insurance Scheme in the given facts.

10. We, therefore, hold that the action of the Respondents in denying the benefit of the Air Force Group Insurance Scheme to the Petitioner on the ground that he has not been discharged by the Invalidating Medical Board is irrational and bad in law and the same is hereby set aside and quashed.

11. As noticed above, the Petitioner suffered injuries resulting in 40% disability which has been held to be attributable to his service. The injuries suffered by the Petitioner also rendered him unfit to perform his normal duties and compelled him to seek discharge. The Petitioner is, therefore, held to be entitled to the disability benefit under the Air Force Group Insurance Scheme with effect from 31st October, 1996 when he was discharged from service in addition to the other benefits which enure to the Petitioner on account of his service.

It is made clear that in case, the Respondent No. 1 has effected payment to the Petitioner under any other scheme, it shall be entitled to adjust the amount thereof against the amount which is found payable to the Petitioner in terms of the order which has been passed today. The Respondents shall calculate the amount which the Petitioner is entitled to on account of the present order and pay the same to the Petitioner within three months from the date of receipt of this order.

12. The learned Counsel for the Respondents submits that the present writ petition would not be maintainable for the reason that the Respondent is a society. We find that this writ petition was filed as back as on 1997 and rule was issued in the matter on 19th January, 1998. No such objection has been pressed for a period of almost 12 years when the writ petition had remained pending in this Court. Even otherwise, the principles which would govern adjudication of the claim of the Petitioner stood settled by this Court in the judgment passed in January, 1997 in Ex. Subedar Baljor Singh (Supra). It was for the Respondents to apply the legal principles laid down and ensure that no person is compelled to seek redressal in similar circumstances. In this background, we are not inclined to reject this petition at this stage on the objection of the Respondents.

13. This writ petition is allowed in the above terms.

14. Dasti to both the parties.