

(2008) 02 P&H CK 0264
In the Punjab And Haryana At Chandigarh

Ex-Naik Mohan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Arms Act, 1959 — Section 25, 27
Army Act, 1950 — Section 48
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 324

Citation : (2008) 2 PLR 10

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohinder Pal, J.—Brief facts of the case are that the petitioner was enrolled as a Sapper (Sepoy) in the Indian Army on May 22, 1973. From the date of enrollment upto the year 1987 the petitioner carried out his duties to the satisfaction of the Army Authorities. In 1987, while serving in 203 Bomb Disposal Company at Kirkee (Pune), the petitioner developed some medical problem due to which he was admitted in Military Hospital, Pune. He remained in Military Hospital for about two months. Thereafter, he was put in Low Medical Category CEE and was sent on sick leave. After expiry of sick leave, when the petitioner joined, he was again admitted in Military Hospital, Pune, and was discharged from there in August, 1987.

2. In 1988, the petitioner was posted at 101, Engineer Regiment, Zirakpur. In 1989, he was admitted in Military Hospital, Western Command, Chandigarh for metal treatment, from where he was medically boarded out in low medical category on August 16, 1989 as per Discharge Slip Annexure P-1, and was sent home being unfit for Army service. It has been averred by the petitioner that he was recommended 40 per cent disability pension along with normal pension from the date of discharge by the Medical Board. After being discharge, he is getting normal pension and 40 per cent disability pension recommended by the Medical

Board has not been released to him. The rejection of the disability pension by the pension sanctioning authority was conveyed to the petitioner by the Record Office, Bombay Engineer Group, Kirkee, Pune vide letter dated October 19, 1992 (Annexure P-2). Appeal of the petitioner against the order rejecting his disability pension was dismissed by the First Appellate Committee and it was conveyed to him vide letter dated July 10, 2000 (Annexure P-6). The petitioner continued his efforts for release of disability pension through the Ex-Servicemen's Grievances Cell, Ropar, to whom letter dated December 28, 2004 (Annexure P-7) was sent by the Army Authorities conveying the rejection of the petitioner's claim. The petitioner then served legal notice dated February 22, 2005 (Annexure P-8) upon the respondents, but to no avail.

3. In this petition filed under Articles 226/227 of the Constitution of India, the challenge is made to the action of the Army Authorities whereby case of the petitioner for disability pension has been rejected. He has prayed for release of disability pension along with interest at the rate of 18 per cent from the date it became due to him.

4. In the written statement filed by the respondents, it was stated that the petitioner was placed in low medical category as a case of Schizophrenia Psychosis (295). He was brought before the Invalidating Medical Board on July 27, 1989. The Board, after due consideration, opined that the petitioner's disability was neither attributable to nor aggravated by military service nor connected with service conditions. The disease was held to be a constitutional disorder unrelated to military service. The proceedings of the Medical Board were duly approved by the competent authority. It was averred that the petitioner was not entitled to disability pension and service pension as per entitlement was released to him with effect from August 28, 1989. It was further averred that since the onset of the disability of the petitioner was at a peace station and it was because of constitutional disorder, service conditions had no affect on the disease. It was further pleaded that in the year 1987, the petitioner was handed over to Civil Police at Kirkee for investigation of offence under Sections 302/326/307/324/148/149 of the Indian Penal Code and Sections 25/27 of the Arms Act, 1959. He was released on bail on October 06, 1987, from civil custody of District Jail, Ropar. He was also awarded punishment for an offence u/s 48 of the Army Act for intoxication. It was stated that the petitioner was a habitual offender. It has further been averred that the Invalidating Medical Board only assessed the percentage of disablement of the petitioner as 40 per cent for two years. It was denied that the Invalidating Medical Board had recommended grant of disability pension to the petitioner. The Pension Sanctioning Authority had rejected the claim of the petitioner on the ground that the invalidating disease was neither attributable to nor aggravated by military service.

5. In the replication filed by the petitioner, he reiterated the averments made in the writ petition.

6. We have heard the learned Counsel for the parties and have gone through the

records of the case.

7. While arguing before us, learned Counsel for the petitioner has laid stress on the point that at the time of entry into service, the petitioner was hale and hearty and was not suffering from any disease. From May, 1973, when he was enrolled in the Army, till 1987, he served the Army to the entire satisfaction of the Army Authorities. He was admitted in the Military Hospital in May, 1987 and ultimately on August 16, 1989, he was discharged from the Army after it was diagnosed that he was suffering from Schizophrenia Psychosis. The learned Counsel argued that the disease was attributable to military service. In support of his contention, he relied upon a Division Bench judgment of this Court rendered in the case of *Ashwani Kumar Ex-Havaldar v. Union of India and Ors.* 1996(4) SCT 154 wherein the respondents were directed to grant disability pension to the petitioner therein on the basis of the report of the Medical Board showing his disability to be 20 per cent. In that case, the petitioner was suffering from "essential hypertension" and case of the respondents was that the same could not be attributed to military service and that there was no casual relationship between the disease and the military service. The respondents had relied upon Regulation 173 of the Army Pension Regulations, 1961 (hereinafter referred to as "the Pension Regulations") and Rule 7(c) of Appendix-II referred to in Pension Regulations 48, 173 and 185 to support their plea that "essential hypertension" was a constitutional disease and it could not be treated as a disability attributable to the military service. On the other hand, learned Counsel for the petitioner had relied upon Regulation 173 of the Pension Regulations and Rule 7(b) of Appendix-II and argued that in the absence of any note recorded at the time of the petitioner's entry in the service and in the absence of any material to show that in the opinion of the Medical Board, the disease could not be detected on medical examination, the benefit of presumption contained in first part of Rule 7(b) of Appendix-II should be given to the petitioner. The Division Bench in that case agreed with the argument of learned Counsel for the petitioner and held that the petitioner was entitled to the benefit of presumption contained in first part of Rule 7(b) of Appendix II, namely, that the disability should be deemed to have been arisen during the course of the service and is attributable to military service.

8. Learned Counsel for the respondents has relied upon the cases reported as *Controller of Defence Accounts (Pension) and Ors. v. S. Balachandran Nair* 2006(1) SLR 51 and *Union of India and Ors. v. Keshar Singh* 2007(4) SLR 100.

9. In *S. Balachandran Nair's* case (supra), the Apex Court, after referring to its earlier decisions in *Union of India v. Baljit Singh* 1996(1) S.C.C. 315 and *Union of India (UOI) and Others Vs. Dhir Singh China, Colonel (Retd.)*, , held that where Medical Board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court cannot direct the Government to pay disability pension. In that case, the respondent was having some kidney complications and the medical authorities

found his illness as "anxiety neurosis". After prolonged illness, the respondent was boarded out and the medical authorities were of the opinion that he became unfit for continuing in service and was put under the category of "EEE" meaning "unfit and useless" and was finally discharged from service.

10. In Keshar Singh's case (supra), the respondent had developed schizophrenia while in military service. The disability did not exist before entering service. The Apex Court, after taking note of Rules 7(b) and 7(c) of the Appendix-II referred to in the Pension Regulations, observed as under:

A bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall 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. An exception, however, is carved out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, Clause (c) of Rule 7 makes the position clear that if a disease is accepted as having arisen in service it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions are due to the circumstances of duty in military service. There is no material placed by the respondent in this regard.

11. In Keshar Singh's case (supra), the High Court had held the illness to be attributable to Army Service and directed grant of disability pension whereas the Medical Board had given a clear opinion that illness was not attributable to military service. The Apex Court held that both the learned Single Judge and the Division Bench were not justified in their respective conclusion that the respondent was entitled to disability pension. The Apex Court also referred to its earlier decisions in Baljit Singh case (supra), Dhir Singh China case (supra) and S. Balachandran Nair's case (supra).

12. In the instant case, as stated above, the petitioner was placed in low medical category as a case of Schizophrenia Psychosis. The Invalidating Medical Board on July 27, 1989 had opined that the petitioner's disability was neither attributable to nor aggravated by military service nor connected with service conditions. The disease was opined to be a constitutional disorder unrelated to military service. In the written statement it was further pleaded that in the year 1987, the petitioner was handed over to Civil Police at Kirkee for investigation of offences under Sections 302/326/307/324/148/149 of the Indian Penal Code and Sections 25/27 of the Arms Act, 1959. He was released on bail on October 06, 1987, from Civil custody from District Jail at Ropar. This fact has not been denied by the petitioner in his replication. Rather, it has been stated that case against the petitioner was filed at Ropar due to land dispute in his village when he was on leave and that after joining the Unit, investigation was carried out in Kirkee but he was found not guilty.

13. The Invalidating Medical Board assessed the percentage of disablement of the petitioner as 40 per cent only for two years and had not recommended grant of disability pension to the petitioner. The Pension Sanctioning Authority had rejected the claim of the petitioner holding that the invalidating disease was neither attributable to nor aggravated by military service. In these circumstances, the case of the petitioner is squarely covered by the observations of the Hon''ble Supreme Court in S. Balachandran Nair's case (supra) and Keshar Singh's case (supra) and the observations made in Ashwani Kumar Ex-Havaldar's case (supra), relied upon by the learned Counsel for the petitioner, are of no help to him.

14. The matter can also be examined from another angle by referring to the relevant provisions of the Pension Regulations.

Rules 7(b) and 7(c) of Appendix-II, read as under:

7(b) 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 military service. 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.

7(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

15. Both Rules 7(b) and 7(c) have to be read together. As has been enunciated by the Hon''ble Supreme Court in Keshar Singh's case (supra), a perusal of these provisions makes it clear that if a disease has led to the discharge of individual, it shall 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. An exception, however, is carved out in Rule 7(b) itself that if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, Clause (c) of Rule 7 makes the position clear that if a disease is accepted as having arisen in service it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions are due to the circumstances of duty in military service. However in this case, as has been noticed above, there is no material placed on record by the petitioner in this regard nor it has been averred that the same was produced before the Invalidating Medical Board to show that the disease was attributable to or aggravated by military service.

16. Regulation 173 of Pension Regulations read as under:

Primary conditions of the grant of disability pension:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or above.

17. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix-II. Relevant portion in Appendix-II reads as under:

2. Disablement or death shall be accepted as due to military service provided it is certified that:

(a) The disablement is due to wound, injury or disease which:

(ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by-

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note: The Rule also covers cases of death after discharge/invalidating from service.

3. There must be a casual connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case.

18. Regulation 423 of the Pension Regulations is also relevant. The same reads as under:

423. Attributability of service:

(a) For the purpose of determining whether the cause of disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence is to be accepted as reasonable doubt, for the purpose of these

instructions, should be of a degree of cogency, which though not reaching certainly, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases, occurring in Field Service/Active Service areas.

(b) The cause of disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self inflicted or duty to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-inflicted, negligence or misconduct.

(c) The cause of disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that 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 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.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board/medical officer will specify reasons for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service, will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the CO. Unit will furnish a report on:

(i) AFMS F-81 in all cases other than due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment or disabilities is concerned; a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the later case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).

19. A perusal of the above provisions clearly reveals that under Regulation 173 of the Pension Regulations, disability pension would be computed only when disability has occurred due to wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. It is amply clear from a perusal of Clause (a) to (d) of Regulation 423 of the Pension Regulations, quoted above, that in respect of a disease the Rules enumerated there are required to be observed. Clause (c) provides that if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury/disease per se is on account of military service.

20. In view of the legal opinion, explained above, and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the petitioner was not attributable to the military service, we find no merit in this writ petition and dismiss the same. No order as to costs.