

(2009) 08 DEL CK 0225

In the Delhi High Court

Case No : Writ Petition (C) No. 9186 of 2009

Ex Nk. Singheswar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Army Pension Rules, 1961 — Rule 1, 2
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2009) 08 DEL CK 0225

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; Ashwani Bhardwaj, for Respondents 1 to 4 and Captain Rahul Sonia and Anjali Vohra, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioner was enrolled in the regular Army on 3.11.1983. The petitioner was placed in low medical category P-2 (Permanent) w.e.f. 2.11.2001. The medical category of the petitioner did not improve and thus the petitioner sought discharge from service due to his medical condition w.e.f. 31.3.2002. The petitioner was not granted disability pension on the ground that since he had himself proceeded on premature retirement he would not be entitled to the disability pension.

2. The petitioner served a legal notice dated 20.1.2009 to release disability pension. This notice was replied to on 28.4.2009 by the Dte. Gen. of Infantry (legal), GS Branch, Headquarters of the Ministry of Defence (Army) rejecting the claim on the same ground of the petitioner being disentitled on account of his having sought premature retirement. The petitioner has, thus, filed the present writ petition.

3. We took up the writ petition on 25.5.2009 and pointed out to learned Counsel for respondents 1 to 4 that the issue was no more res integra and that we had been compelled in various proceedings filed by various petitioners on account of this attitude of the respondents to comment on it as pensioners were being

compelled to come to court to seek redressal of their grievances even though this ground having sought retirement themselves would not deny pensionary benefits. Despite this fact the counsel for the respondents insisted that they will have to file a counter affidavit and examine this matter though we were inclined to grant relief to the petitioner in view of the settled legal position.

4. Since the aforesaid stand was taken by the respondents and taking into consideration the fact that despite the legal notice and the settled legal position the respondents were insisting on a stand contrary to the settled legal position both in their reply as well as in Court on 25.5.2009 we made it clear that if we find the petitioner entitled to disability pension the respondent would have to suffer exemplary costs of not less than Rs. 25,000.00 for compelling the petitioner to come to Court and seeking redressal of his grievances.

5. No counter affidavit has been filed by the concerned respondents 1 to 4 but learned Counsel for the said respondents has produced in Court today an order dated 24.8.2009 conveying the sanction of disability pension to the petitioner subject to any decision to be rendered by the Apex Court, if any. Learned Counsel for the respondents on a specific query is not able to point out any petition pending on this question before the Apex Court.

6. The legal position has been scrutinized on a number of occasions on the scope of Regulation 173 of the Pension Regulations for the Army, 1961 and more so in view of the Judgment of this Court in Mahavir Singh Narwal Vs. Union of India (UOI) and Another, and the SLP filed against the same stands dismissed on 4.1.2008. The relevant paragraph of the said Judgment is reproduced hereunder:

5. ...The question is whether on account of seeking discharge on compassionate ground the petitioner loses his right to claim disability pension although such disability had been attributable and aggravated on account of military service. The reliance placed by the learned Counsel for the respondent on Pension Regulations 173 provides answer to this question. Regulation No. 173 lays down where disability is attributable or aggravated by military service and how same has to be determined under the rules in Appendix II. Rules 1 and 2 of Appendix II are as follow:

1. With effect from 1st April, 1948 in supersession of all previous orders on the subject, the entitlement to disability and family pension, childrens allowances and death gratuities will be governed by the following rules. Invalidating from service is a necessary condition for the grant of a disability pension. An individual who at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCOS/ORS/NCS(E) who are placed permanently in a medical category other than "A" and are discharged because no alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have invalidated

out of service.

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

(a) the disablement is due to a wound /injury, or disease which

(i) is attributable to military service or

(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.

6. On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability. It is also admitted case of the parties that the petitioner got disability on account of stress and strain of military service and his category was initially lower down temporary to CEE on 21st September, 1978 for a period of 6 months and after the Release Medical Board examined the petitioner on 11th April, 1979 it found the disability to be 30% aggravated by stress of military service and he was down graded to permanent low medical category. Once the petitioner was in low medical category according to Rules 1 and 2 of Appendix II of Pension Regulations 173 he shall be treated as invalidated from service. It seems that on careful consideration of the Pension Regulations 173, read with Rules 1 and 2 of Appendix II, the respondents themselves have recommended for grant of disability pension to the petitioner vide their letters dated 3rd April, 1986 and subsequently on 11th April, 1986 which is as under.

DISABILITY PENSION CLAIM : EX-No. 3157896 SEP MAHAVIR SINGH NARWAL.

1. Further to this Headquarters letter of even number dated 03 Apr 86.

2. The disability pension claim in respect of Ex No. 3157896 Sep Mahavir Singh Narwal has been re-examined threadbare by the competent authority. During the course of examination it is seen that the individual was placed in temporary low medical category "CEE" for six months with effect from 21 Sep 78. Having been placed in low medical category he had applied for discharge on compassionate grounds on 19 Feb 79.

3. He was discharged from service on 24 Apr 79 after completion of all the medical formalities which are applicable in case of disposal of permanent low

medical category personnel.

4. It has been opined by the competent authority that his discharge from service can not be legally termed as of "on compassionate grounds at his own request". But it should be considered as disposal of low medical category personnel because of non availability of suitable sheltered appointment for him. Therefore the cause and clause of his discharge from service requires change to facilitate him to get disability pensionary benefits.

5. In view of foregoing, necessary action may Therefore be taken to change the cause and clause of discharge and to initiate disability pension papers immediately. Action taken be intimated to this Headquarters latest by 30 Apr 86 and later a monthly progress report by 5th of each month be submitted till finalisation of his disability pension cause.

6. All previous letters issued on the subject will be treated as cancelled.

Sd/-

(P.N. Reddy)

Varishth Civilian Staff

Adhikari/SCS Shayak

Adjutant General/AAG

PS4 for Adjutant General.

7. The arguments advanced by the learned Counsel for the respondents that these letters were not issued by the competent authority is not of any relevance for grant of disability pension. What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 and 2 of Appendix II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Regulation 173. We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 up to date. For future disability pension the respondent may conduct another medical board to assess the percentage of disability of the petitioner. Arrears of disability pension be paid to the petitioner within a period of 8 weeks. If the same are not paid within 8 weeks the petitioner shall be entitled to the interest at the rate of 9% on the amount of arrears. With these directions the writ petition is allowed.

7. Thus, though the respondents have now redressed the grievances of the petitioner themselves, we do not appreciate the stand of the respondents in compelling the petitioner to come to court despite his legal notice and insisting on giving a response to the legal notice contrary to the legal position. We also do

not appreciate the obdurate stand of the respondents in Court where despite these facts being brought to the notice of the then counsel there was an insistence to oppose the writ petition. We had granted an opportunity to file the counter affidavit making it clear that respondents would have to suffer consequences of the success of the petitioner in the present proceedings. The approach of the respondents is that even if there is a legal principle settled, each person must approach the court to get relief. There can be no basis for such an attitude since the cases are not turning on their own facts but are based on one common principle and thus the attitude of the respondents is almost contemptuous apart from unnecessary burdening the dockets of the court.

8. The writ petition is accordingly disposed of as satisfied in view of the order dated 24.8.2009 passed by respondents 1 to 4 and respondents 1 to 4 will pay costs to the petitioner of the present proceedings quantified at Rs. 25,000.00. It is open to respondents 1 to 4 to recover the costs from the officer responsible who took the stand inconsistent with the settled legal position. The costs to be paid within four (4) weeks.