

(2008) 08 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) No. 7941 of 2003

Ex Nk Sultan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Citation : (2008) 08 DEL CK 0047

Hon'ble Judges : Sanjay Kishan Kaul, J;Mool Chand Garg, J

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; Rahul Soni, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The petitioner was enrolled in the regular Army on 10.10.1984 as a Combatant Soldier and was posted in 1992-1993 at high altitude at the Siachin Glacier. The petitioner claims that he was deployed in the Operation Meghdoot at Sonam post, Siachin and while facing temperature of minus (-) 45 to minus (-) 49 degrees Celsius developed frost bite on both feet. The petitioner was admitted as a battle casualty of Operation Meghdoot at Partapur Hospital on 13.2.1993 and was evacuated by Air to Command Hospital Chandimandir for further treatment on 18.2.1993. The frost bite resulted in amputation of both the toes of the feet of the petitioner and the petitioner was invalidated out of service on 16.11.1994 as a case of 100 per cent disability. The Commanding Officer of the petitioner also issued a certificate dated 15.5.1995 certifying that the petitioner was deployed in Operation Meghdoot.

2. The pension claim of the petitioner was submitted to the CCDA (P) Allahabad who reduced the disability of the petitioner to 80 per cent on 16.12.1995. The appeal filed against the said order also failed and thus the petitioner had to file a civil writ petition, being CWP No. 4549/1996 which was allowed on 21.11.1999 on the premise that once the Medical Board had opined the case of the petitioner as one of 100 per cent disability the CCDA (P) Allahabad could not have reduced

the percentage of disability. The petitioner was also held entitled to certain other allowances including attendance allowance.

3. The said judgment is stated to have been honored by the respondents.

4. The petitioner has now made a two-fold grievance. Firstly that the petitioner is entitled to a higher pension as a war injury pension case as per the notification dated 30.10.1987 of the Government of India, Ministry of Defence. Secondly the petitioner claims a sum of Rs. 1.00 lakh as ex-gratia payment which has been held entitled to all war injury cases w.e.f. 1947.

5. The factual matrix aforesaid is not in dispute in terms of the copy of the counter affidavit handed over to us in Court today since the original counter affidavit has still not been brought on record by the respondents despite the number of dates of hearing. It emerges from the counter affidavit that the case of the petitioner has been rejected on the ground that he suffered a frost bite which should not be treated as a war injury or war like condition. The cause of disease is only due to extreme cold climatic condition and it is pleaded that the petitioner is not entitled to war injury pension. The petitioner has clearly averred in paragraph 4 of the petition that he was deployed at Sonam at Siachin Glacier during operation Meghdoot and there is no denial to the said averment in the counter affidavit.

6. Learned Counsel for the petitioner has drawn our attention to our order passed in WP (C) No. 3316/2008 titled Naik Jaswant Singh v. Union of India and Ors. on 27.5.2008 wherein it was observed as under:

The petitioner relies upon a policy decision of the respondents dated 31.1.2001 which makes a categorization of cases where death or disability has been attributable to or aggravated by military service. Category E of Para 4.1 provides for death or disability arising as a result of the incidents mentioned under the same and at sub-para (i), it also includes "Operations specially notified by the Govt. from time to time?".

Learned counsel for the petitioner submits that the posting at Siachin Glacier is per se a special operation which is so notified though he does not have a copy of the Notification as also that a perusal of the counter affidavit does not bring out a clear picture and the only defence taken is that the petitioner's case was not classified as a battle casualty as per existing Rules.

In our considered opinion, insofar as the disability of the petitioner is concerned, there can be no doubt that the same is a direct result of the petitioner being caught in a link for a long duration of time and exposed to snow and cold as per (Annexure P-1) of the Respondents. "This act thus falls within the definition of 'battle casualty' provided that the post at Siachin Glacier is categorized as a special operation and is duly notified.

We thus consider it appropriate to direct the respondents to consider the case of the petitioner in terms aforesaid and examine whether the disability as per the

allegations of the petitioner arising due to his posting at Siachin Glacier falls within Para 4.1 Category E (i) of the policy decision dated 31.1.2001. An appropriate action be taken within three weeks from today, "to be duly communicated to the petitioner through counsel, wherein the petitioner would be entitled to either continue in service failing which he would retire on 30.6.2008.

7. We are of the considered view that a similar direction is liable to be passed in the case of the petitioner insofar as it relates to the facts of the case restricted to the claim of the war injury pension, attendance allowance and ex gratia payment. In fact the facts of the present case are better inasmuch as there is not even a factual dispute raised about the deployment of the petitioner at Sonam post at Siachin Glacier during Operation Meghdoot. To constitute a war injury case it is not that the person must suffer a bullet injury in view of the definition of a battle casualty as referred to aforesaid. We may note that the petitioner ought to have raised even this claim in the earlier writ petition, but the matter being one of pension, which is a continuing cause, we examined the matter on merits.

8. A writ of mandamus is issued directing the case of the petitioner to be examined within the aforesaid parameters for grant of war injury pension, attendance allowance and ex gratia payment within a period of three (3) months from today and necessary action be taken in pursuance thereto. Needless to say that the payments made to the petitioner would be adjusted against the payments, if any, found due to the petitioner, which in turn are restricted to the period of three years prior to filing of the petition.

9. The petition is allowed leaving the parties to bear their own costs.