
(2006) 03 DEL CK 0054

In the Delhi High Court

Case No : Writ Petition (C) No. 9520 of 2003

Ex Recruit Shish Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Citation : (2006) 129 DLT 89 : (2006) 89 DRJ 192 : (2007) 1 SLJ 418

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : M.K. Gaur, for the Appellant; N.K. Pandey, for R-1 and R-2 and Anurag Prashar, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—The primary question which needs consideration in this writ petition is whether the Army Group Insurance Scheme (hereinafter referred to as the "AGIS") authorities can refuse disability benefits under the AGIS particularly when the petitioner was invalidated out of service because of disability having arisen or aggravated during service. The petitioner, a Sepoy in the Indian Army, after being invalidated because of being placed in low medical category due to PULMONARY TUBERCULOSIS, was granted disability pension as such disability was attributed to military service as per the report of the medical board constituted by the respondent Army. The medical board and PCDA Allahabad had also confirmed that such disease was attributed to military service. In this writ petition the main contest is between the petitioner and the respondents which deals with the AGIS of defense Personnel who by its orders dated 28th January 2002 denied the benefits of AGIS to the petitioner and by orders dated 7th March 2002 and 21st May 2003 rejected his representations dated 27th February 2002 and 19th March 2003 respectively.

2. It is the case of the petitioner that the respondent No. 3 had no authority to withhold the disability benefits under the AGIS as there was a clear finding in his favor by an authorised board that the disease which led to his invalidation, was

attributable to the army service and, Therefore, the petitioner was granted the disability pension. On the other hand, respondent No. 3 in his counter affidavit has stated that mere admissibility for grant of disability pension does not entitle a person for grant of disability benefits under disability scheme for AGIS as the disability benefits under the scheme are not applicable to the members who are discharged from service or invalidated due to the disability which existed before entering the service. The respondent No. 3 referred to the clinical report of the petitioner to seek that at the time of joining the army, the petitioner's disease was in advanced stage and, Therefore, the petitioner might have been suffering with the symptoms of PULMONARY TUBERCULOSIS before his enrollment in the army. The respondents No. 1 and 2 have further admitted that the ailment might have aggravated due to the stress and the strain of basic military training undergone by the petitioner as a recruit. They have also admitted that the petitioner was granted service element and disability element of the disability pension for life as the ailment was considered aggravated by military service condition and that the basis of the disability benefits paid by the AGIS fund is entirely different from the basis of the disability pension paid by the Union of India. The criteria for the eligibility of the payment of disability benefits paid by the AGIS and disability pension paid by the Union of India through CDA (Pension) Allahabad being different are not comparable and, Therefore, both cannot be linked to each other.

3. We are unable to agree with the submissions of the learned counsel for the respondents. It would be wholly illogical to hold that one wing of the Army takes a stand that the ailment of the petitioner was sufficient to avail of the disability pension whereas another wing of the Army i.e. AGIS takes a contrary stand. Admittedly, the medical board of the Army had assessed the disability of the petitioner at 100% and had also reached a finding that such ailment was attributable to military service and consequent to such finding, the disability pension was granted to the petitioner. The respondent No. 3 in its counter affidavit dated 15th July 2004 submits that the petitioner must have suffered from symptoms of early tuberculosis. This clearly shows that even the respondent No. 3 is proceeding on mere hypothetical presumptions and is not certain as to whether the petitioner contracted pulmonary tuberculosis before or after getting enrolled in the army. Moreover, it is evident that the petitioner is being granted the disability pension by the PCDA (P) Allahabad on the basis that the disease by which the petitioner was invalidated out of service was contracted by him during his service in the army. This is so because the disability pension is not paid to an army personnel unless the disease which leads to invalidation out of service had arisen or aggravated during the military service. Since the Army's own medical board had given a certificate as to the disability of the Army personnel, the AGIS could not adopt a stand contrary to such medical board's recommendation and that too based on hypothetical considerations. The AGIS which also takes care of its Jawans in case of disability cannot deprive the legitimate rights of its own soldiers by not giving them disability benefits. Such

denial of monetary benefits to the petitioner based upon his disability, and duly certified by the Medical Board is clearly unsustainable. The contention of the respondents that at the time of recruitment only routine examination is done, is not acceptable at all as in the armed forces the recruits have to undergo very extensive, rigorous and thorough medical check up prior to enrollment. Therefore, it does not lie in the mouth of the respondents to submit that only routine tests were carried out at the time of the recruitment of the petitioner. The respondents have consequently, illogically and unjustifiably deprived the petitioner of his disability benefits as admissible under the AGIS to which the petitioner is legally entitled. Consequently, the writ petition deserves to be allowed. The orders of the respondents dated 28th January 2002 refusing the disability benefits under the AGIS to the petitioner and the consequent orders dated 7th March 2002 and 21st May 2003 rejecting the petitioner's representations dated 27th February 2002 and 19th March 2003 respectively are accordingly quashed and set aside by a writ of certiorari. A writ of mandamus shall also issue to the respondent No. 3 to release the benefits of AGIS to the petitioner not later than 15th May, 2006.