

(2013) 05 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 668 of 2002 and IA No. 551 of 2002

Ex. Rfn. Bhadur Lal

APPELLANT

Vs

U.O.I. and Another

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) LabIC 3078

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : S. Kour and Ms. Vandana Kumari, for the Appellant; Deepika Mahajan, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Hasnain Massodi, J.—Petitioner was enrolled in the Army (JAK-RIF) on 15-10-1980 as the Infantry Solider and deputed for training to

Army Training School at Jabalpur on 29th July 1989. While the petitioner was still undergoing entry level training, he develop pain in his back and

was admitted in Military Hospital Jabalpur, where he remained till 21-09-1981 as indoor patient and was discharged with 28 days sick leave.

There was no respite in his pain and he was again admitted in the Army Hospital Jabalpur on 30 November 1981. Finally an Invaliding Medical

Board was constituted on Ist March 1982 at Military Hospital Jabalpur. The Board examined the petitioner and took the view that he was unlikely

to be a fit solider due to his invaliding disability. The Board recommended his discharge on medical grounds under the medical category 'EEE'. The

opinion rendered by Medical Board was approved by the Officiating ADMS HQ MP B&O Area Jabalpur on 13th March 1982. The petitioner

was invalided out of service w.e.f. 2nd April 1982 under Army Rule 13(3) item IV as an unattested soldier (Recruit) due to invaliding disability

SCIATICA (LT) 353"" with 20 percent disability. The petitioner after his discharge on medical grounds approached respondents with his claim for

disability pension. His claim though duly forwarded by the JAK RIF to CCDA (P) Allahabad was rejected vide letter no G3/82/5521/IV/703

dated 26th August 1982. The Competent Authority was of the opinion that the disease from which the petitioner was found to be suffering was not

attributable to or aggravated by the Military Service. The decision was duly communicated to the petitioner.

2. The petitioner called in question the order of CCDA (P) Allahabad dated 26th August 1982 on 22nd May 1985 through a memorandum of

appeal to the Government of India. The appeal was considered and as the competent authority did not find any reasonable ground to alter the

decision of CCDA (P) Allahabad, the appeal was rejected and order conveyed to the petitioner vide order no. 7(239)/86/D (Pen-A) dated 29th

June 1987.

3. The petitioner once again preferred an appeal on 18th June 1992 i.e. after a gap of 5 years. The second appeal was considered by Government

of India, Ministry of Defence and same was rejected. The decision was conveyed to the petitioner vide order no. 6(27)/92/D (Pen-A & AC)/IInd

Appeal dated 21st April 1994.

4. The petitioner has come up with a writ petition on hand to seek direction to the respondents to grant disability pension in his favour. The writ

petition is opposed amongst others on the grounds of laches and inordinate delay. The respondents deny the factual averments made in the petition

and insist that the petitioner was rightly denied disability pension and that he had no cause to invoke the writ jurisdiction of the court.

5. I have gone through the pleadings and have heard learned counsel for the parties.

6. The petitioner essentially is agitating a cause that accrued to him on 21st April 1994 when the order rejecting his second appeal was conveyed

to him, if not on 29th June 1987 when his appeal against the order of CCDA (P) Allahabad dated 26th August 1982 was rejected. The petitioner

slept over the matter for next 8 years. The claim set up in the petition is,

therefore, stale and the petition badly suffers from delay and latches. The petition merits dismissal on said ground alone. This apart the disease diagnosed as SCIATICA (LT) 353 was detected immediately after the petitioner was recruited and was still undergoing entry level training to be formally deployed to serve the army. The opinion of invaliding Medical Broad duly approved by ADMS HQ MP B&O Area Jabalpur cannot be faulted. The petitioner surprisingly does not question the order of CCDA (P) Allahabad or order dated 26th August 1982 rejecting his Ist Appeal or order date 21st April 1994 rendered on second appeal. Petitioner without throwing challenge to the aforesaid orders seeks mandamus against the respondents, which cannot be granted without successfully questioning the successive orders declining his prayer.

7. Viewing from any angle the petition is devoid of any merit and calls for outright dismissal. Dismissed