
(2001) 02 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16778 of 1999

Ex-Risaldar Manjit Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Army Rules, 1954 — Rule 13(3)I, 2(A)
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 02 P&H CK 0112

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Mr. Bhim Sen Sehgal, for the Appellant; Mr. Arvind Moudgil, for the Respondent

Judgement

K.C. Gupta, J.—This is a petition under Articles 226 and 227 of Constitution of India.

2. Briefly stated the facts are that the petitioner joined in the Indian Army on 6.7.1970. His date of birth is 16.10.1952. He remained posted at various units and served at various places in both, field and peace area, where the duties were of hard nature. He got various promotions and lastly, he was promoted to the rank of Risaldar on 1.11.1993.

3. The petitioner unfortunately, suffered from the disease of "NIDDM" and was brought before the Medical Board, which downgraded him to the medical category CEE(T) for six months on November 21, 1994. However, his condition did not improve and he was placed in the medical category CEE(P). Thereafter, the petitioner was brought before the Invalidating Medical Board, which recommended him to be invalidated out of service of army in lower permanent category CEE(P) on 30.4.1996, after rendering 26 years, 9 months and 24 days service as against 28 years tenure of service provided for the rank of Risaldar.

4. It was next averred that the service element of pension of petitioner was

released but his disability claim was rejected on the ground that it was neither attributable, nor aggravated to military service. The copies of the said letters are Annexures A-1 and A-2. On the basis of the said letters, the petitioner filed appeal, but no decision was taken on the same. Ultimately, the petitioner filed Civil Writ Petition No. 5853 of 1998, in this Court, in which it was informed that the appeal of the petitioner had been rejected on 21st August, 1998. Consequently, the petitioner withdrew the petition to challenge the appellate order passed by the respondents, in which it was conveyed that the appeal was not maintainable, as the disability of the petitioner was assessed at less than 20% (11 to 14%) by the Medical Board and further the disability is neither attributable, nor aggravated by the service conditions. Aggrieved by the said order, the petitioner had filed the present writ petition. Notice of motion was issued on the said petition. The respondents appeared and filed a written statement.

5. Mr. Bhim Sen Sehgal, counsel for the petitioner, Mr. Arvind Moudgil, counsel for the respondents, have been heard and gone through the record carefully.

6. It is an admitted fact that the petitioner was enrolled in the Army on 6th July, 1970, and was discharged from service on 30th April, 1996 (AN), under Army Rule 13(3) item I(iii)(a) read in conjunction with Sub-Clause 2(A) being placed in medical category lower than AYE and not upto the prescribed Military Physical Standard, after completion of 26 years, 9 months and 24 days being in Low Medical Category CEE (Permanent) for the disability "NIDDM 250(d)". It is further stated in the written statement that according to the opinion of the Release Medical Board, the disability of the petitioner was constitutional and assessed as 11-14% for five years at the time of discharge. It is further an admitted fact that the petitioner had preferred an appeal dated 25th November, 1997 against rejection of his disability pension and the same was rejected vide order dated 25th August, 1998. There is no dispute about it that the petitioner had been paid all his service elements.

7. Now, the only question to be seen is whether the petitioner is entitled to disability pension. The counsel for the petitioner contended that the petitioner is entitled to disability pension on the ground of suffering invalidating disease "NIDDM" if this disability was assessed at 20% or more than 20%. He further contended that the respondents, were not right in holding that the petitioner had suffered the constitutional disorder and as such the disability was not connected with the service. There is no dispute about it that the petitioner was medically fit when he had joined the service. The High Court in "Surjit Singh v. The Secretary of the Government of India, Ministry of Defence, New Delhi" 1999(5) SLR 59 has held that a constitutional disease does not ipso facto debar a person from claiming disability pension. In the said case, another authority "Union of India v. Sepoy Satwinder Singh and another" 1998(4) RSJ 467 had been relied. The Delhi High Court in "Deepak Kumar Singh v. Union of India and others" (1997) 68 Del LT 788 has held that where the petitioner had suffered the disease of insulin

dependent diabetes mellitus, then he had suffered the said disease during the period of service and is attributable to the Air Force Service. The SLP was also filed by Union of India against the said decision, which was dismissed by the Hon"ble Supreme Court on 14.7.1998. The said Special Leave to Appear (Civil) No. is 4487 of 1998. Therefore, it could be held that the disease of "NIDDM" is such a disease, which can be suffered by a soldier when he was serving the Armed Forces and it cannot be said to be a mere constitutional disease.

8. The ancillary point for determination which now arises is with regard to the extent disability suffered by the petitioner.

9. It has been stated by the respondents that the petitioner was invalidated on the ground of suffering from "NIDDM" disease on 30.4.1996 and he was to be re-examined by the Survey Medical Board, after the expiry of five years i.e. on 30.4.2001 i.e. within a period of about two months and if it was found that he was having disability of 20% or more, than he could be entitled to disability pension.

10. Resultantly, I allow this writ petition partly by setting aside orders, Annexures P-6, dated 6.9.1996/20.9.1996 and P-9 dated 21.8.1998 and directions are given to the respondents to bring the petitioner before Resurvey Medical Board after the expiry of five years on 30.4.2001, within two months and if the petitioner is found suffering from the disability to the extent of 20% or more then disability pension be released from the date of declaring his disability to be 20% or more within three months of the said period. The petitioner is directed to appear before the Resurvey Medical Board as and when called.

11. Writ petition partly allowed.