
(2007) 04 DEL CK 0211

In the Delhi High Court

Case No : Writ Petition (C) No. 11774 of 2006

Ex-Sep. Bhagirath Prasad

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Pension Regulations for Army, 1961 — Regulation 197, 198, 287

Citation : (2007) 04 DEL CK 0211

Hon'ble Judges : T.S. Thakur, J; S.N. Aggarwal, J

Bench : Division Bench

Advocate : A.K. Trivedi, for the Appellant; Mohan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioner in this writ of mandamus calls in question the impugned order dated 23.7.1996 passed by the Record Officer (respondent No. 3.) dismissing his claim for invalid pension. The petitioner has also sought for directions to the respondents to re-consider his case for grant of invalid pension to him w.e.f. the date of his discharge i.e. 3.1.1991 and to grant him invalid pension from the said date with arrears together with interest.

2. The brief facts of the case are that the petitioner was initially enrolled in the Kumaon Regiment on 12.11.1969 and was discharged from there on 10.6.1973 (AN) under Rule 13(3) Item III (iv) of Army rules, 1954 at his own request on extreme compassionate grounds after rendering 3 years and 211 days of service. Thereafter he was re-enrolled in defense Security Corps (in short "DSC") on 3.1.1981 and discharged from there on 3.1.1991 (AN) under Rule 13(3) Item III (i) of Army rules, 1954 on completion of his term of engagement. The former service of 3 years and 211 days rendered by the petitioner with the Kumaon Regiment was counted with DSC. He had, thus, rendered an aggregate qualifying service of 13 years and 240 days in both spells for which he was paid a sum of Rs. 13,095/- on account of Service Gratuity and Rs. 8973/- on account of

Retirement Gratuity as per orders then existed.

3. The petitioner being in low medical category was brought before Release Medical Board (RMB) held on 13.9.1990 in INHS Asvini, Bombay to assess his medical condition before discharge on completion of normal term of engagement.

The Release Medical Board after physically examining him placed him under low medical category "C" (permanent) and opined that his disease was a constitutional disorder and was neither attributable nor aggravated by military service.

4. The petitioner has alleged in paragraphs 3 and 4 of the writ petition that he was discharged from service after declaring him medically unfit on completion of more than 10 years of service when he was placed in low medical category "C" (permanent). He has further stated that he was not given any alternative employment by the respondents because of his disease in low medical category.

5. The petitioner had filed a representation before the concerned Army authorities in relation to his claim for invalid pension but his said representation was rejected vide impugned order dated 23.7.1996 (Annexure P-1).

Aggrieved from there and relying on Regulations 197, 198 and 287 of the Pension Regulations for the Army Part, the petitioner has filed this writ petition seeking a writ of mandamus against the respondents directing them to grant him invalid pension w.e.f. 3.1.1991 with all consequential benefits.

6. The respondents have filed their counter affidavit in response to the show cause notice of this writ petitioner sent to them. They have denied the claim of the petitioner for grant of invalid pension prayed for by him in the writ petition. It is contended that as per provisions of Regulations 197 and 198 of Pension Rules for the Army, 1961 invalid pension/gratuity is admissible to an individual who is invalidated out of service on account of disability, which is neither attributable nor aggravated by military service. The stand of the respondents is that the petitioner is not eligible for invalid pension since he was not invalidated out of service but discharged under Rule 13(3) Item III(i) of Army Rules, 1954 on completion of his normal term of engagement. The respondents have denied that the petitioner was discharged from service on medical grounds or on the ground that he was in low medical category at the time of his release as alleged in the petition. The respondents have prayed for the dismissal of this writ petition.

7. We have heard the learned Counsel for the parties and have also perused the entire record of this case carefully.

8. Mr. Trivedi appearing for the petitioner placing reliance on Regulations 197(c) and 198 of Pension Regulations for the Army, 1961 had vehemently contended that the petitioner is entitled to invalid pension as he was discharged from Army service after more than 10 years of actual qualifying service. As against this argument advanced on behalf of the petitioner, counsel for the respondents had argued that the provisions of Regulations 197 and 198 are not applicable to the

petitioner because he was not invalidated out of service or discharged from Army service on the ground that he was in low medical category at the time of his release/discharge but his discharge was on account of his superannuation after completing the normal term of engagement.

9. To appreciate the above rival contentions advanced by the learned Counsel for the parties, it would be necessary to refer to and reproduce the provisions of Regulations 197(c) and 198 of the Pension Regulations for the Army, 1961 and the same are reproduced hereinbelow:

197 (c). A low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category.

198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible.

10. Regulation 198 extracted above provides that an Army personnel is entitled for grant of invalid pension after he has more than 10 years of actual qualifying service but the grant of invalid pension is subject to fulfillment of conditions stipulated in Regulation 197 referred to above. A plain reading of Regulation 197(c) would show that there are two pre-requisites, which must co-exist before an Army personnel becomes entitle to grant of invalid pension after qualifying service of 10 years or more and these two conditions are

- i) the retirement/discharge must be on the ground of low medical category; and
- ii) lack of alternative employment compatible with low medical category.

11. We have perused the original record including the personal file of the petitioner. On perusal of the same, we have found that the petitioner was discharged/released from service of DSC w.e.f. 3.1.1991 after he had completed his normal period of engagement. The mere fact that he was got medically examined by the Release Medical Board held on 13.9.1990 at INHS Asvini, Bombay at the time of his release, ipso facto, does not entitle him to the grant of invalid pension provided for in Regulations 197 and 198 relied upon by the petitioner.

The claim of the petitioner for grant of invalid pension, in our view, was rightly rejected by the respondents vide impugned order dated 23.7.1996, relevant portion whereof is reproduced hereinbelow:

Invalid Pension is admissible to those who are invalidated out of service under Army Rule 13(3) item III (iii) with a qualifying service of 10 years and above vide Govt. letter mentioned in para 2 of your petition cited above. You were discharged from service on completion of terms of engagement and never invalidated out of service; hence the contents of Govt. letter dated 30 Oct 87 are not applicable to you. If you are facing financial hardships, you are advised to approach Zila Sainik Board of your district for providing necessary help to get

financial assistance.

12. On going through the record of the case and upon consideration of the submissions made by the learned Counsel for the parties, we do not find any merit in the claim of the petitioner for grant of invalid pension. This writ petition is devoid of any merit and, Therefore, fails and is hereby dismissed leaving the parties to bear their own costs.