

(2006) 11 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) No. 16247 of 2004

Ex. Sep. Raghbir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Army Act, 1950 — Section 13, 20, 36, 40, 63
Army Rules, 1954 — Rule 13, 13(3)
Pension Regulations (Part-I) 1961 — Rule 173

Citation : (2006) 11 DEL CK 0215

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Darpan Wadhwa, for Respondent Nos. 1-4 and Col. T. Prasad, Dy. JAG., for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—In this writ petition running into two pages, the petitioner claims that order dated 25th February, 2004 passed by the respondents be quashed and they be directed to pay to the petitioner disability pension with effect from 21st May, 1985 along with arrears and interest.

2. According to the petitioner, he had earlier filed a writ petition bearing No. WP(C) 5283/97 praying for quashing of order dated 12th September, 1994. Vide order dated 6th March, 2003, the respondents were directed to consider the case of the petitioner and pass a speaking order after examining the question of attributability. However, the respondents vide order dated 25th February, 2004 had declined the request of the petitioner. The said order reads as under:

Tele Mil : 2406306 REGD BY POST

Jat Regiment Abhilekh

Karyalaya

Records The Jat Regiment

Bareilly-243001

3169394/LC/JR 25 Feb 2004

No. 3169394 Ex Sepoy

Raghubir Singh S/o Shri Abhe Ram

Vill and PO - Bamla

Teh and District - Bhiwani (Haryana)

SPEAKING ORDER

1. Consequent on sustaining injury `FRACTURE SHAFT TIBIA FIBULA (RT) N-823, F-916 in road accident on having fall from Motorcycle as you were under the influence of liquor due to your own negligence, you were downgraded to low medical category CEE (Temporary) for six months with effect from 14 Sep 84.

2. Moreover incurring fourth red ink entry on 09 Nov 84, you proved yourself undesirable and Therefore you were discharged from service on 20 May 85 (AN) under Army Rule 13(3)III(V) as services no longer required having been brought before duly constituted Release Medical Board held at Military Hospital Bareilly on 28 Feb 85. The Release Medical Board assessed your disability at 30 percent neither attributable to nor aggravated by military service being the disability caused while you were not performing any bonafide military duty.

3. As you had been discharged from service as undesirable and your disability was considered as neither attributable to nor aggravated by military service, you were not eligible for grant of disability pension in terms of Rule 173 of Pension Regulations (Part-I) 1961. However, persuasion of your representation dated 09 Jan 93, your case of disability pension was referred to Competent Pension Sanctioning Authority i.e. PCDA (P) Allahabad for their decision/clarification. Though, PCDA(P) Allahabad had not considered you eligible for grant of disability pension, they further referred your case to Government of India, Ministry of defense. The Government of India, Ministry of defense thus treated your representation as an appeal and after a careful and thorough examination rejected the same vide their letter No. 7(906)/93/D(Pen. Appeal) dated 12 Sep 94 on the grounds that you were discharged from service being undesirable for further military service and that according to Revised Entitlement Rules 1982 the injury sustained by you was considered while you were not performing any bonafide military duty.

4. CWP 5293/97 filed by you has already been disposed off by Hon''ble Court of Delhi on 06 Mar 2003. In the light of the Court Order the case was thoroughly examined by Higher authorities and it is decided under the provisions of Rule 173 of Pension Regulations (Part-I) 1961 the basic condition for grant of disability pension is that the invaliding disability should have been either attributable to or

aggravated by military service and is assessed at minimum twenty percent. Since, you had sustained the injury due to your own negligence while not performing bonafide military duty, no disability pension is admissible to you in terms of abid pension Regulations.

Sd/-

(Om Prakash)

Major Senior Record Officer

for OIC Records.

3. According to petitioner, he was suffering from 30% disability as a result of fracture, which he suffered in a road accident, while in service. Thus, the petitioner was entitled to grant of disability pension as his disability was in excess of 20% and the injury was attributable to military service. We have referred to above order so as to bring on record the basic facts giving rise to filing of the present petition. 4. In the counter affidavit, the respondents have stated that petitioner was not invalidated out of service though he was down graded to low medical category CEE (Temporary) for 6 months with effect from 14th September, 1984. As per the Court of Inquiry, the injury sustained by him was not attributable to military service as he was under the influence of liquor. In fact, the stand of the respondents can be summed up as under:

5. It may be noted the Petitioner has incurred four red ink entries as mentioned below:

(a) 14 days rigorous imprisonment on 20.07.1981 for committing an offence under s. 36(d) of the Army Act;

(b) 28 days rigorous imprisonment on 22.07.1983 for committing an offence under s. 40(d) of the Army Act;

(c) 10 days detention on 21.12.1983 for committing an offence under s. 63 of the Army Act;

(d) 28 days rigorous imprisonment on 9.11.1984 for committing an offence under s. 63 of the Army Act.

6. On incurring the fourth red ink entry on 09.11.1984, the petitioner proved himself undesirable and was Therefore discharged from service on 20.05.1985 (AN) under Army Rule 13(3) II (V) as 'Service no longer required' while he was in low medical category. It is a procedure in the Army that low medical category person is compulsorily brought before Release Medical Board prior to his actual discharge from service to assess the percentage of disability and its attributability or aggravation by military service. Accordingly, the petitioner was brought before the Release Medical Board held on 28.02.1985 at Military Hospital, Bareilly. The Release Medical Board assessed percentage of the injury at 30% as neither attributable to nor aggravated by military service, being disability occurred while

he was not performing military duties.

7. The petitioner was not entitled to for grant of disability pension in terms of Rule 173 of Pension Regulation Part-I (1961) as he was discharged from service as being undesirable for further military service and not invalided out on account of injury, which, in any case, has been viewed as neither attributable to nor aggravated by military service. Even though, on his representation, his case was submitted to the Competent Pension Sanctioning Authority i.e. PCD (P) Allahabad for clarification vide Record office letter No. 31693/DP/JR dated 29.01.1993, the PCDA(P) Allahabad referred vide Record Office letter NO.3169394/DP/JR dated 29.01.1993 to the Government of India, Ministry of defense, which treated the representation dated 09.01.1993 of the petitioner as an appeal against the rejection of his disability pension by PCDA(P) Allahabad, and after careful and thorough examination, rejected the same vide their letter No. 7(906)/93/D (Pen.Appeal) dated 12.09.1994 stating that petitioner was discharged as being undesirable for further service. It is also stated therein that petitioner was not performing bonafide military service.?

4. Furthermore, after disposing of the writ petition by the High Court, the matter was considered by different authorities and the combined fracture suffered by the petitioner on 26th March, 1984 was considered to be not attributable to military service. The petitioner was discharged from army being undesirable and not for Low Medical Category.

5. It cannot be disputed that writ of the petitioner was allowed by the High Court. However, the respondents were directed to consider the case of the petitioner as per the principle enunciated by a Division Bench of this Court in the case of Ex. Signalman Shri Bhagwan v. Union of India and Ors. 103 DLT 269 Section 20 of the Act read with Rule 13 grants power to the respondents to discharge a person if he is found to be undesirable for military service but they were obliged to comply with requirements of the said provisions and follow the due process. Such discharge is permissible as stated in the case of Ex. Const. Bijender Singh v. Union of India and Ors. (WP(C) No. 5297/2003 decided on 31st August, 2006). Once the procedure prescribed in these provisions were complied with, the Court can hardly interfere in the discretion exercised by the respondents in response to the discharge of member of the force in accordance with law.

6. The Medical Board to which the petitioner was subjected to immediately after injury had recorded that the injury was not attributable to military service. As per the findings of the Court of Inquiry and the documents submitted by the petitioner itself, he was not performing any army duty at the relevant time. Admittedly he had taken drinks and was going to market when he met with an accident. In reply to show cause notice, the petitioner had not disputed any facts. In fact all that he said in that reply that he should be pardoned and should be permitted to continue in service. In face of the records produced before us, we are unable to find any error in exercise of power by the respondents.

7. Consequently, this petition is dismissed, while leaving the parties to bear their own costs.