

(2009) 11 J&K CK 0018
In the Jammu And Kashmir High Court

Ex-Sep. Sanjeet Kumar	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Citation : (2010) 1 JKJ 289

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—The petitioner, Sanjeet Kumar, was enrolled in the Army on November 17, 1986. During the course of his employment, he

was found to have suffered disability of ""RHEGMATO GENOUS RETINAL DETACHMENT (RT) EYE"" for which he was downgraded to

Low Medical Category CEE (Temporary), which on review was up-graded to Medical Category BEE (Permanent) by a Medical Board, held at

Command Hospital, Western Command. It was later in October, 1998, that he was found by the Medical Board, held at Military Hospital,

Ahmedabad, a case of ""UNSPECIFIED PSYCHOSIS'. He, however, continued to remain in Low Medical Category CEE (Temporary) from

April, 1999. The Competent Authority, there-after approved the petitioner's discharge from service w.e.f. July 31, 2001. Petitioner's request to

serve the Army till completion of his Fifteen Years of Service, was later accepted, cancelling his Discharge. The Medical Board had assessed

petitioner's over all disability at 35% i.e., ""RT EYE RETINAL DETACHMENT (OPTD) 361"" AND UNSPECIFIED PSYOHOSIS-298"" at

15% and 20% respectively.

2. The petitioner was, there-after invalided out, but without grant of the Disability Pension.

3. He has filed this Writ Petition, seeking quashing of the Principal, CDA (Pension) Allahabad's Communication No. G-3/67/03/1-2002 dated 3-

4-2002 rejecting his case for grant of Disability Pension, besides seeking a Command to the respondents to consider, sanction, release and pay

him the Disability Pension from the date of his discharge, along with arrears. Besides, the Disability Pension, he claims capitalized value of

commuted pension too.

4. The case set up by the petitioner in the Writ Petition, is that he suffered 'UN-SPECIFIED PSYCHOSIS' because of the 'Stress and Strain' of

the Army Service, and was thus entitled to Disability Pension, under Regulation 173 of the Pension Regulations, read with Rule 7 (b) of the

Entitlement Rules.

5. The respondents' contest the petitioner's claim to Disability Pension, on the ground that the 'UN-SPECIFIED PSYCHOSIS', from which the

petitioner suffered, was neither attributable to nor aggravated by the Military Service, and he was not thus entitled to the grant of Disability Pension

under the Pension Regulations.

6. To support their case, the respondents have placed on records, the copies of the Medical Board proceedings, held from time to time, in respect

of the petitioner, besides the communications, addressed by the Officer In-charge, Records intimating the petitioner the rejection of his Disability

Pension case, and a copy of the Entitlement Rules.

7. The question that falls for determination, in this Writ Petition, is as to whether or not the disability for which the petitioner was invalided out, was

attributable to and aggravated by the Military Service.

8. Perusal of the opinion of the Medial Board, held in respect of the petitioner on April 10, 2001 indicates that the petitioner's disability did not

exist at the time of his entry into Army Service and that the disabilities had occurred due to 'Stress and Strain' of the Military Service.

9. The respondents have not placed any document on records, on the basis whereof, it may be said that the disability suffered by the petitioner was

neither attributable to nor aggravated by the Military Service.

10. According to the Classification of Diseases, indicated in Annexure-III to Appendix-II of the Entitlement Rules 'PSYCHOSIS', is indicated as

one of the diseases, affected by 'Stress and Strain'.

11. The stand taken by the respondents, in their reply to the Writ Petition, is, therefore, not supported by the material, which they have placed on

the records.

12. The material placed by the respondents, on the other hand, substantiates the case set up by the petitioner in his Writ Petition that he had

suffered disability because of the 'Stress and Strain' of the Army Service, for which he was invalided out. In view of the above, it is thus apparent

that the petitioner has been denied Disability Pension, without any cause, compelling him to approach this Court for redressal of his grievance.

Respondents, are therefore, additionally liable to compensate the petitioner, for the delay, which has occasioned because of the unwarranted

rejection of his case for grant of Disability Pension, for no reasons at all.

13. In the absence of any opinion of the Medical Board, supported by reasons, that the disability suffered by the petitioner, during the course of his

service, was neither attributed to nor aggravated by the Military Service, the petitioner could not be denied grant of Disability Pension and other

service benefits to which he may be entitled to under the Rules.

14. Respondent No. 2's Communications impugned in the Writ Petition, denying Disability Pension to the petitioner are thus arbitrary and illegal.

These are, therefore, required to be quashed commanding the respondents to consider petitioner's case for award of Disability Pension in

accordance with the rules, along with arrears.

15. This Writ Petition, therefore, succeeds and is, accordingly, allowed with costs quantified at Rs 20,000/-. By a Writ of Certiorari, Principal

CDA (Pension) Allahabad's Communication No. G-3/67/03/1-2002 dated 3-4-2002 and Officer-In-Charge Records Communication No.

Pen/D.10370/3988289/16 of April 22, 2002, are, accordingly, quashed, And a Command issued to the respondents to consider the petitioner's

case for grant of Disability Pension under Rules along with arrears accrued thereon, within a period of two months. Petitioner's case for grant of

commuted Pension shall also be considered by the respondents under rules and appropriate orders passed thereon within the aforementioned

period.