
(2007) 01 DEL CK 0073

In the Delhi High Court

Case No : Writ Petition (C) No. 15955 of 2006

Ex. Sepoy Jitender Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Citation : (2007) 01 DEL CK 0073

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

Bench : Division Bench

Advocate : M.K. Gaur, for the Appellant; K.M. Rai, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The petitioner was enrolled in the Indian Army as a Sepoy on 9.10.1984. According to him he was subjected to

careful medical examination by the Reporting Medical Officer and was found free from any kind of disease or illness at the time of his enrollment.

On 10.2.1987 the petitioner was invalided out of service being placed in Low Medical Category due to the disease - Essential Hypertension with

20% disability. But the same was said to be not attributable to or aggravated by the military service. The claim of the petitioner for grant of the

disability pension was denied by the respondents. Against the said rejection, the petitioner filed a statutory appeal but the same was also rejected

vide order dated 27.12.1991 on the ground that the same has been made after the lapse of six months and as such could not be entertained. The

petitioner, thereafter, filed a writ petition in this Court being Civil Writ Petition No. 8248/2004 which was disposed of by a Division Bench of this

Court vide order dated 21.5.2004 The said order reads as under:

% 21-05-2004

Present : Mr. M.K.Gaur for the petitioner.

SarojBid wan for the respondent.

WP(C) NO. 8248/2004

This matter is squarely covered by the decisions rendered in Jasbir Singh and Ors. v. UOI and Ors. and Ex. CFN Sugna Ram Ranoliya v. UOI

and Ors. The writ petition is allowed in terms thereof.

2. Thereafter, the case of the petitioner was considered by the respondents and vide a speaking order dated 18.3.2005, the case of the petitioner

for grant of disability pension was again declined, as the I.D Essential Hypertension was stated to be neither attributable to nor aggravated by the

military service. The petitioner served a notice upon the respondents on 4.9.2006 and then filed the present writ petition claiming the disability

pension and prayed for setting aside of the order dated 18.3.2005.

3. The respondents have filed a counter affidavit wherein the same stand has been taken. The Appellate Authorities had also taken the same view

and according to the respondents the disability of the petitioner is neither attributable nor aggravated by the military service.

4. The most important feature of the present case upon which the respondents have relied upon and vehemently argued for rejection of the relief

prayed for is, that the petitioner had not even served for a period of 2 years when he was found to be ailing from the disease of "Essential

Hypertension - 401" The disease was stated to be "constitutional" and "not attributable to service". The disability of hypertension was assessed at

20% for two years and the Board of the petitioner was held on 14.11.1986 and as per the opinion of the expert, which forms part of the Medical

Board proceedings, the parameters were found to be normal but the petitioner was stated to be case of essential hypertension of moderate grade

and was recommended for invalidation in category "EEE". He had headache, breathlessness, accustomed vision persisting at the time of his

examination. On this basis it is contended that this Court would not find fault with the opinion of the medical experts particularly when it was neither

perverse nor in any way vocative of the relevant rules. The learned Counsel appearing for the respondents relied upon the conclusions stated by a

Division Bench of this Court in the case of Ex. Spr. Bhim Singh v. Union of India and Ors. W.P.(C) No. 21671/2005 decided on 31.8.2006

where somewhat similar petitions were dismissed by this Court with the following findings:

38. The learned Counsel appearing for different petitioners in these writ petitions have relied upon judgments of this Court in the cases of Ex. Ct.

Jasbir Singh and Others Vs. Union of India (UOI) and Others, , Deepak Kumar Singh Vs. Union of India, and Satpal Singh v. Union of India

1999 IV AD (Del.) 321. In addition to the above mentioned judgments, they have also relied upon the judgment of this Court in the case of Ex.

Cfn. Sugna Ram Ranoliya v. Union of India and Ors. being CWP No. 3699/2004 decided on 27.7.06 , in support of their contention that all such

diseases like Schizophrenia, mental disorder or Generalized Seizure would be attributable and/or aggravated by military service. They would,

according to them, be entitled to receive disability pension in law. There is no doubt that in these judgments, various such diseases have been held

to be attributable to and/or aggravated by military service but they have not been held as a proposition of law. It relates to the cases which have

been referred to in those judgments. In those cases, there was no definite opinion of the Invaliding Medical Board or that of the Classified and/or

Specialists to substantiate the plea of the respondents that the disease is neither attributable to nor aggravated by military service. The principles

enunciated by the Benches in those judgments are to be applied to the facts of each case. Unless the material (opinion of the Medical Board)

produced before the Court is ex facie unbelievable, absurd and is not in accordance with rules, regulations and instructions issued by the

department, would have precedence. In the present cases, the medical experts have clearly indicated the diseases of the petitioners relatable to a

period much prior to their joining the Army though it surfaced with gravity after their joining the Army. A person who was suffering from

Generalized Seizure at the age of 10 or 12 years and had joined the Army and the disease manifested with greater gravity within few months or

initial years of service, the Court cannot be expected to hold that such disease was attributable to or aggravated by military service particularly

when the Medical Board in specific terms have recorded their findings against such attributability or aggravation. In the case of Controller of

Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, the Supreme Court has held that precedence has to be given to the findings

recorded by the Medical Board. In the present cases, the findings of the Medical Board are in conformity with the rules, regulations and guidelines

meant for medical officers as the patients have been subjected to examination by a Specialist or a Classified Specialist prior to their being examined

by the Medical Board. Due investigations have been conducted and the history given by the petitioners themselves relate such diseases much prior

to a period of their joining the Indian Army.

5. A similar view was taken by another Division Bench of this Court in the case of Ex. Sep. W/man Lilu Ram v. Union of India and Ors. W.P.(C)

No. 7162/2005 decided on 16.11.2006 where the Court had declined to grant the disability pension primarily on the basis that the period of

service was so short that it would not justify the attributability of aggravation of the disease by military service, keeping in view the nature of the

disease.

6. In the present case also, the petitioner was invalided out of the military service within a period of 2 years and had shown the sign of the said

ailment even prior thereto. The petitioner has not pleaded on record any facts and circumstances which could manifest the onset of the disease

during the military service.

7. For the reasons aforesated, we find no merit in this petition and dismiss the same while leaving the parties to bear their own costs.