

(2006) 08 DEL CK 0152

In the Delhi High Court

Case No : Writ Petition (C) No. 7965 of 2005

Ex. Singmn. Harpal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Medical Services of the Armed Forces Regulations, 1962 — Regulation 423

Citation : (2006) 08 DEL CK 0152

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

Bench : Division Bench

Advocate : Non, for the Appellant; Sumit Attri, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—On 7.2.80 the petitioner was enrolled in Indian Army as a Signalmn (sepoy) and was allotted service no. 14233872. The petitioner at the time of joining the service was medically fit and was suffering from no ailment whatsoever. He was declared fit to perform all duties. During the course of service, the petitioner developed Low Back Ache and Hypertension which got aggravated day by day by conditions of service and finally on 1.1.86, the petitioner was down graded to medical category "BEE" (Permanent) and the petitioner was invalided from Army service after 15 years of service. The disability of the petitioner was accepted as 40% by the Medical Board and was attributable to military service. However, the claim of the petitioner for grant of disability pension was not accepted by PCDA (P) Allahabad on 13.8.96. The petitioner then preferred an appeal against the said order which was also rejected by the authorities concerned on 20.5.98. The petitioner was subjected to Resurvey Medical Board in the year 2000 and according to the petitioner, the Medical Board had recommended as "condition Static" and assessed the disability of the petitioner @ 40%. Despite such facts, the disability claim was rejected by PCDA(P) Allahabad as informed by the Record Officer vide his letter

dated 24.8.2000. However, vide letter dated 20.8.04 after great persuasion the PCDA(P) Allahabad vide their letter dated 13.2.04 granted the disability pension to the petitioner @ Rs. 310/- pm w.e.f 1.1.1996 for life though it ought to have been granted to the petitioner @ 40%. Being aggrieved from the action of the respondents, the petitioner has filed the present writ petition praying for quashing of the letter dated 19.5.03 and further that the respondents be directed to grant to the petitioner disability pension w.e.f 1.1.96 @ 40%.

2. The above claim of the petitioner has been contested by the respondents and the stand of the respondents is clear from the brief facts narrated by them in the counter affidavit which reads as under:

NO. 14233872 Ex-Signmn Harpal Singh was enrolled in the Army on 07 February 1980 and discharged from service with effect from 01 January 1996 A R 13 item III (V) read in conjunction with Sub rule 2 A, being placed in medical category lower than AYE for diseases ?Low Backache? and ?Primary Hypertension? and found not up to the presented military standard. The individual rendered his unwillingness to further service, his discharge order was issued by Signals Records giving date of discharge to leave the Corps of Signals with effect from 01 January 1996. He had rendered total 15 years and 328 days of service in the Army. He is in receipt of service pension for having completed minimum pensionable service in addition to his disability pension. The disability pension claim in respect of the petitioner was forwarded to the PCDA (P) Allahabad, a statutory body of pension sanctioning authority by Signals Records vide their letter No. P/14233872/DP-3/NER dated 30 March 1996. The medical advisors attached to PCDA (P) Allahabad after carefully adjudicating the rejected on the plea that the disability was considered neither attributable to military service, nor fulfill the conditions namely, it existed before and has remained aggravated thereby. His degree of disablement was assessed at less than 20% vide their letter No. G-3/57/240/G-96 dated 13 August 1996. The fact was communicated to the petitioner by Signals Records vide letter No. P/1423872/DP-4/NER dated 22 August 1996. The fact was communicated to the petitioner by Signals Records vide letter No. P/14232872/DP-4/NER dated 22 August 1996 with an advice to the petitioner to prefer an appeal against decision of PCDA (P) Allahabad, if he so desires, within 6 months from 13 August 1996.

The ibid petitioner submitted an appeal dated 04 August September 1996 against the decision of PCDA (P) Allahabad which was also rejected by Govt. of India, Ministry of defense vide their letter No. 7(118)/97 D (Pen A and AC) dated 20 May 1998 on the plea that the disease was a constitutional disorder. It was also found that diseases have no close time relation with High Altitude Area or field area service. Therefore, the petitioner was not granted disability pension. Re-Survey Medical Board in respect of the petition was held on 26th May 2000 at MH Jaipur who had regarded his disability at 20% as aggravated by military services. Accordingly the disability pension claim was forwarded by Signals Records to PCDA (P) Allahabad who adjudicated the claim of the petitioner and rejected vide

their letter No. 2000/1521/VIII dated 27 July 2000 on the previous plea. The fact was communicated to the petitioner by Signals Records vide their letter No. P/14233872/RSMB/NER dated 24 March 2000 with an advice to prefer an appeal within 6 months, if not satisfied, with the decision of PCDA(P) Allahabad.

An appeal dated 25 November 2000 against decision of PCDA (P) Allahabad submitted by the petitioner was considered by 1st appellate committee at Army Headquarters very carefully and regarded his disability as aggravated by military service and degree of disablement was regarded at 20% for life, accordingly, the petitioner was granted disability pension by the PCDA (P) Allahabad vide their PPO No D/E/915 dated 13 February 2004 in addition to his service pension.

3. From the above narrated facts, it is clear that petitioner was discharged from military service after having put in more than 15 years of service. He developed problems of backache and hypertension during the course of service. He was treated and subjected to a Regular Medical Board which in its findings stated that the petitioner had disability less than 20% in relation to disability of low back while 30% in regard to primary hypertension. The composite assessment of disability was made @ 40%. Besides recording the above findings, the Medical Board also recorded the following findings in AFMSF-16 held on 13.10.95:

In respect of each disability shown as aggravated under B, the Board should state fully : disability 1 and 2 due to stress and strain of service.

(i) The specific condition and period in service which aggravated the disability;

(ii) Whether the effects of such aggravation still persist?

yes.

(iii) If the answer to (ii) is in the affirmative, whether effect of aggravation will persist for a material period.

yes.

(d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.

na.

4. The respondents have not placed any document on record in support of the contention that constituted Resurvey Medical Board or Appellate Medical Board had found the disability of the petitioner not static for life and it was reduced to 20%. The record placed before the Court shows the disability of the petitioner as 40% which has arisen out of the stress and strain of the service and as such, was attributable as well as aggravated by military service. The learned Counsel appearing for the petitioner has also placed reliance upon the Division Bench judgment of this Court in the case of Ex.Cfn.Sugna Ram Ranoliya v. Union of India and Ors. being CWP No. 3699/04 decided on 27.7.06 to contend that the petitioner has discharged his primary onus and the respondents have failed to

produce any record to show that the opinion of the first Medical Board was changed by the Resurvey Medical Board. According to him, upon correct construction of the relevant rules and particularly the concept of attributability to service as explained under Regulation 423 of the Medical Services of the Armed Forces, 1962, such injury would be attributable to military service. The injury or disability of the petitioner not only bears a casual connection with the service condition but in fact is directly attributable to condition and stress of service.

5. In view of the afore-stated discussion, we allow this writ petition and quash the order dated 19.5.03 and further directs the respondents to subject the petitioner to a Resurvey Medical Board and pass orders in accordance with the opinion so expressed by the Medical Board in regard to percentage of disability. They shall ensure that disability pension @ 20% disability w.e.f 1.1.96 should be paid to the petitioner, if not already paid and for the remaining proper orders in accordance with rules will be passed within a period of six months from the date of pronouncement of this judgment.

6. This writ petition is disposed of with the above directions. However, in the facts and circumstances of the case, parties are left to bear their own cost.