
(2007) 05 DEL CK 0189
In the Delhi High Court
Case No : LPA No. 561 of 1998

Ex. Subedar Ishwar Singh		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Pension Regulations, 1961 — Regulation 173

Citation : (2007) 05 DEL CK 0189

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : R.N. Sharma, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—By filing this appeal, the appellant has claimed entitlement to disability pension on the ground that he had been

invalided out of military service in low medical category. The appeal is preferred against the judgment and order dated 7th October, 1998 passed

by the learned Single Judge, dismissing the writ petition filed by the appellant.

2. The appellant filed the writ petition claiming payment of disability pension and contending inter alias that the appellant, while serving in the army,

developed cataract and both his eyes were operated upon. It is contended that development of cataract in both the eyes of the appellant was

attributable to military service. Records were called for and after perusing the same, the learned Single Judge, while dismissing the writ petition,

held that having regard to the nature of the ailment, no material is placed on record by the appellant to show that the opinion of the Medical Board

is in any manner wrong or illegal. The learned Single Judge also disbelieved the contention raised by the appellant that the respondents had

changed the medical documents and made interpolations in the same so as to deny the appellant the benefit of disability pension.

3. Learned Counsel for the appellant raised similar contentions before us. In order to appreciate the aforesaid contentions we called for the report

of the Medical Board. The same was placed before us for our perusal. It is indeed correct that there are some over-writings in the said report but

on careful scrutiny of the same we find that the over-writings and changes made in the said report are initialled by the Medical Board. The

appellant was examined by three doctors, one being the resident and other two being members of the Board. The changes and the corrections

made in the report of the Board are initialled by the Chairman and finally the same is signed by all the three doctors. All the three doctors of the

Medical Board have also certified that the appellant be boarded out from military service and that his disability is not attributable to military service.

The appellant was suffering from cataract in both his eyes for which he was ordered to be boarded out.

4. The opinion expressed by the Medical Board must be given primacy. The Supreme Court in its decision in *Controller of Defence Accounts*

(Pension) and Others Vs. S. Balachandran Nair, , referring to another decision of the Supreme Court in *Union of India (UOI) and Another Vs.*

Baljit Singh, , has held that where the Medical Board found that there was absence of proof of injury/illness having been sustained due to military

service or being attributable thereto, High Court's direction to the Government to pay disability pension was not correct. Since in the present case,

the Medical Board has given a considered opinion that the illness suffered by the appellant was not attributable to military service, for payment of

disability pension to the appellant. We may also appropriately refer to a Division Bench decision of this Court in *Nafa Singh Vs. Union of India*

(UOI), . In the said decision a Division Bench of this Court considered the provisions and conditions for grant of disability pension, dealt with

under Regulation 173 of the Pension Regulations, 1961. The aforesaid Regulation mandates that unless otherwise specifically provided, a disability

pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military

service and is assessed at 20% or over. Although the disability in the present case was assessed at more than 20%, but since the appellant was not

invalided from service on account of disability which is attributable to or aggravated by military service he was held to be not entitled to payment of such pension.

5. Findings and opinion of the Medical Board are questions of fact authoritatively decided by experts on the subject. There is no material before us

to disbelieve and over rule the findings of the Medical Board in the instant case. The appellant was suffering from cataract, which can happen to

any normal human being, whether or not he is in military service. It cannot be said when in military service one is bound to suffer such diseases. The

Medical Board has held that there is no causal connection between cataract with which the appellant is suffering from and the military service. We

Therefore have no hesitation to hold that the disease of the appellant was not attributable to or aggravated by military service. We Therefore hold

that the decision of the respondent that the appellant was not entitled to disability pension was wholly justified and cannot be faulted on any legal

ground.

We find no merit in this appeal and the same is dismissed.