
(1993) 12 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13066 of 1992

Gurdas Singh

APPELLANT

Vs

Union of India (UOI) and Ors

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Army Pension Rules, 1961 — Rule 112

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 3

Pension Regulations for Army, 1961 — Regulation 173

Citation : (1994) 2 ILR (P&H) 39

Hon'ble Judges : R.P. Sethi, J

Bench : Single Bench

Advocate : D.S. Pheruman, for the Appellant; S.K. Pipat, Senior Standing Counsel and Joginder Sharma, for the Respondent

Judgement

R.P. Sethi, J.—The Petitioner, an Ex-servicemen, who was discharged from the Army service on 23rd March, 1966 has prayed for issuance of a direction to the Respondents to grant him disability pension at the rate admissible disability with effect from 25th March, 1966 and the rate admissible from time to time alongwith interest at the rate of 18 per cent per annum on the arrears of disability pension. It is submitted that the Petitioner joined the Army service on 8th February, 1961 after thorough medical check-up by the Medical Boards which did not find any disability so far as his health and physique was concerned. He was subjected to periodical medical check-ups in the Unit as well as in the Military hospital during his service and was always found fit as is evident from various annexures filed with the petition. The Petitioner claims to have defended the mother-land during the War between India and China in the year 1962 and thereafter between India and Pakistan during 1965. It is submitted that on account of army service, the Petitioner developed mental sickness which caused him anxiety resulting in his discharge from the army service on the recommendations of the Medical Board. It was declared that the Petitioner had suffered disability to the extent of 50 per cent. It is contended that according to

the Regulations governing the grant of pension, the Petitioner is entitled to the prayer made in his petition, which as wrongly been denied by the Respondents.

2. The claim of the Petitioner has been resisted on various grounds including the one that the Petitioner had never participated in any war and that symptoms of the disease developed in him, after September, 1965, when he had returned from the Field area (Kutch). Finding him emotionally upset, worried and having disturbed sleep, the Petitioner was treated in Military Hospitals, Ahmedabad Bhuj and Pune and he was considered unfit for further military service and discharged accordingly on account of "Anxiety State". The Medical Board had opined that the disability attributed to the Petitioner was due to inherent personality trait and not affected by military service. It is submitted that the case of the Petitioner was examined by CCDA (Pension) and rejected on July 16, 1966 on the ground that the disability from which the Petitioner was suffering was not attributable to the Army service, which infact was stated to be existing before he joined the Army service. It is further contended that the Petitioner was not entitled to the claim of grant of pension under Regulation 173 of the pension Regulations Part-I 1961. It is contended that,--vide Rule 3 of Entitlement Rules laid down in Appendix II to Pension Regulations Part-I 1961, it is necessary that there should be a causal connection between disablement and military service for attributability or aggravation to be conceded. The claim of the Petitioner is state to be without any basis requiring no interference.

Rule 112 of the Pension Regulations of the Army, 1961, Part-I provides:

Unless otherwise provided, the regulations in this Chapter shall apply to all Junior Commissioned Officers, other Ranks and Non-combatants (Enrolled) who were already serving on regular terms/engagements on the 1st June. 1953 as well as those who either joined or join service on or after that date and serve on regular terms/engagements or are brought on to such terms and engagements after that date....

Similarly Regulation 173 provides as under:

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 attributed to or aggravated by military service and is assessed at 20 per cent or above.

The question whether a disability is attributed to or aggravated by military service shall be determined under the rule in Appendix II. As per Appendix "2" "individuals who at the time of his release under the release Regulations is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/ORs/NCs(E) who are placed permanently in a medical category other than (A) and are discharged because no alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharge before the completion of their engagement will be deemed to have invalidated

out of service.

2. Disablement or death shall be accepted as due to military service provided it is certified that:

(a) the disablement is due to wound, injury or disease which:

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by:

(i) a wound, injury or disease which was attributed to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note:--The Rule also covers cases of death after discharge/invaliding from service.

(3) There must be a casual connection between disablement or death and military service for attributability or aggravation to be conceded.

(4) In deciding on the issue of entitlement all the evidence both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.

3. A perusal of the aforesaid Rules would clearly show that disability pension can be granted to an individual who is invalidated from service on account of a disability which is attributed to or aggravated by military service and is assessed at 20 per cent or above. It is not denied that at the time of enrolment every person subject to Army Act is subjected to medical examination which is continued periodically during his service career. Any disease, which is not noted at the time of initial recruitment or is specifically held to be have been acquired at the time or under the circumstances not connected with the Army service, is to be deemed to be an injury or disease acquired by such an individual during service, unless proved otherwise by the Army authorities. An inference of fitness is required to be drawn in favour of the army personnel unless it is shown that he was suffering from a disease at the time of initial recruitment or had acquired the disease under the circumstances not connected with the Army service or that the injury or the disease was such, which could not, in any way, be held to be the result of the Army service. In circumstances where a person is found to have been recorded medically fit after his examination the Army authorities are under an obligation to prove that the disease acquired by such person subject to Army act, had infact been acquired under the circumstances, which could not be attributable to the Army service, I am of the considered opinion that under such (sic) or diseases relating to and in connection with heart ailments requiring to

draw an inference in favour of the army personnel and against the authorities.

4. It has been submitted on behalf of the Respondents that as the Petitioner has never participated in any of the Wars and the disease pertains to his mental disorder, it could not be field to be a disease connected with the Army service entitling him to the grant of relief of medical pension. No. hard and fast rule can be prescribed regarding the acquiring of a disease or incurring, disability for the purpose of grant of pension on medical ground. There may be circumstances, where such disease could be attributed on account of the constant pressure built on any army personnel, his continuous harassment, pressure of work or other circumstances to that effect. It cannot be ruled out that the circumstances could be created and may come into existence, which be responsible for the acquiring of a disease by an army personnel in the form of mental stress, hypertension or diseases relating to and in connection with heart ailments. If the authorities fail to prove that such diseases had not been acquired by the persons concerned on account of army service, sufficient record is required to be produced to the satisfaction of the Court or the Authority adjudicating the rights preferred with respect to the claim of pension. This Court in case of *Ex-septy Roshan Lal v. Union of India*, through Secretary Ministry of Defence, Government of India, New Delhi and Ors. 1992 (2) R.S.J. 390, while dealing with the case under similar circumstances, held as under:

that the disability pension is admissible to a person who is invalided out of service of his having suffered a disability of 20 per cent or more and the disability is found to be attributable to or aggravated by the service conditions. The attributability of the liability to the service has to be determined in accordance with the regulations which inter alia provide that". A disease which had led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

In view of, the above provisions a disease is normally deemed to be attributable to army service if no note of it was made at the time of enrolment of the individual in the Army. Apparently none was made in the present case. It is also not shown that the disease was such that could not have been noticed at the time of the Petitioner's enrolment. Accordingly under the rules and regulations, the Petitioner was entitled to the grant of disability pension. The action of the authority in rejecting his claim cannot be sustained.

Similarly in *Gurnam Singh v. Union of India* and Ors. 1991 (1) R.S.J. 20, this Court has held as under:

The grant of disability pension is covered by the Provision of Regulation 173 of the pension Regulations for the Army, 1961. This provides as under:

173. 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 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

The question as to whether or not the disability is attributable to the military service has to be determined in accordance with the provision of Appendix-II. The relevant entry in Appendix-II is contained in paragraph 7(b), which reads as under:

Paragraph 7(b). A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance, for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

A perusal of paragraph 7(b) as reproduced above would show that a disease which leads to an individual's discharge is deemed to have arisen in service if "no note of it was made at the time of the individual's acceptance for military service." This is precisely the position in the present case. No note was made at the time of the Petitioner's entry into service that he was suffering from any disease, like epilepsy. Furthermore, there is nothing before me to indicate that the disease could not have been detected on medical examination prior to acceptance for service. Inevitably, it must follow that the disability from which the Petitioner is suffering and has led to his discharge is attributable to military service.

5. A Division Bench of this Court, while deciding C.W.P. No. 12162 of 1991 entitled *Sardara Singh v. Union of India* through Secretary to Government of India, Ministry of Defence, New Delhi held as under:

Since the Petitioner had admittedly suffered disability during the service career, the rejection of his claim on the ground that disability is not attributable to military service or that it did not fulfil the requisite condition that it had remained aggravated by military service cannot be sustained. The disability being attributable to military service, the Petitioner was entitled to the grant of disability pension as contemplated under the rules. His claim was, therefore, wrongly rejected by the Respondent.

6. Even though no objection was raised in the written statement, yet learned Counsel for the Respondents submits that the plea of the Petitioner cannot be accepted at this belated stage, as he has not offered any explanation to the prolonged delay. The submission of the learned Counsel cannot be accepted at this stage particularly in view of the judgments of this Court cited to herein

earlier.

As the Respondents have not been in a position to show that the disease alleged to have been acquired by the Petitioner was not attributable to the army service, and the Petitioner has proved that he was hale and healthy at the time he joined army service and remained as such during the such service when he was periodically checked up, his prayer in the petition, being genuine, legal and valid is required to be accepted. Under the circumstances, this petition is allowed by giving direction to the Respondents to admit, sanction and pay disability pension to the Petitioner at the rate of 50 per cent disability with effect from 25th March, 1966 at the rates admissible from time to time. The prayer of the petitioned for the grant of interest at the rate of 18 per cent annum is declined under the peculiar circumstances of this case. No costs.