
(2008) 02 P&H CK 0133
In the Punjab And Haryana At Chandigarh

Gurjit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 2 PLR 136

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohinder Pal, J.—The petitioner was enrolled as Sepoy in the Indian Army on September 01, 1999. He has granted leave for one month on March 11, 2001. While on leave, he met with an accident and suffered fracture tibia and fibula (Rt.). Firstly, he got treatment from Civil Hospital, Anandpur Sahib and thereafter from Military Hospital at Chandimandir, Panchkula. After having been discharged from Military Hospital, Chandimandir, he joined his duties and remained in his unit for about one year. However, he was presented before the Medical Board and was declared to be in medical category S.H.A.3, P.E. (Permanent). As per Medical Board's opinion, he was discharged from the Army on November 31, 2003. The case of the petitioner is that he served the Army for about four years and three months, but was not granted disability pension, consisting of both service element and disability element, after his discharge-from service.

2. The disability pension claim of the petitioner was rejected on June 14, 2004, on the reasoning that the disability was of a constitutional order, which was neither attributable to nor aggravated by military service. The rejection of disability pension claim was communicated to the petitioner vide letter dated June 30, 2004 (Annexure P2) with an advice to prefer an appeal if he felt unsatisfied with the decision. The petitioner submitted appeal (Annexure P3) on August 27, 2004, which was rejected and communicated dated October 16, 2006 (Annexure P5) in this regard was sent to him.

3. In this petition filed under Articles 226/227 of the Constitution of India, challenge is made to the action of the Army Authorities whereby case of the petitioner for disability pension consisting of both the elements i.e. service and disability element has been rejected and it is prayed that a direction be issued to the respondents to release the same to the petitioner.

4. In the written statement filed by the respondents, it has been pleaded that the petitioner was discharged from service in the year 2003 and the present petition which has been filed after a lapse of four years is liable to be dismissed on the ground of delay and laches. It has been further pleaded that at the time of accident, the petitioner was on leave and accident took place at his native village which has no connection with the service and, therefore, as per Regulation 173 of the Army Pension Regulations, 1961" (hereinafter referred to as "the Pension Regulations") he was not found entitled to any disability pension. The petitioner sustained severe injuries in his leg on March 11, 2001 while he was riding a scooter. As per remarks of Commander 86 Infantry Brigade dated November 10, 2001, the injury was assessed as not attributable to military service vide IAFY-2006 (Injury Report) dated March 28, 2001. The petitioner was downgraded to low medical category SIHIA3 (T-24) P4R1 (Temporary) for Fracture Tibia Fibula (Rt.) with effect from July 16, 2001, which was subsequently converted into A3 (Permanent) with effect from December 31, 2001. Retention of the petitioner was not found justifiable in the public interest. Hence, he was discharged from service. It has been further stated that before discharge from service, the petitioner was brought before a duly constituted Release Medical Board wherein the disability. Fracture Tibia Fibula (Rt.) was assessed at 20% with the remarks that the disability is not attributable to military service. The petitioner's disability pension claim was rejected on the ground that the disability is neither attributable to nor aggravated by military service.

5. Learned Counsel for the petitioner has argued that a person on casual/annual leave is deemed to be on duty. A soldier on annual leave is subject to Army Act and can be recalled at any time as leave is at discretion of authorities. In support of his contention, he relied upon the authority reported as Ex-Sepoy Hayat Mohammed v. Union of India and Ors. 2008(1) S.C.T. 425.

6. The respondents have denied the benefit of 20% disability pension and service element of pension on the grounds that the disability is neither attributable to nor aggravated by military service; that the injury was suffered by the petitioner while on annual leave at his home town, that the injury suffered by him cannot be termed as having been suffered on duty, and that the injury has no casual connection with military duty. In the written statements, the respondents have taken the plea that as per Regulation 173 of the Pension Regulations, disability pension can be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or more. Thus, the only question involved in this petition is - whether the petitioner is entitled to benefits which are admissible to army

personnel who are invalidated out of service or not.

7. In this case, the petitioner was enrolled as Sepoy in the Indian Army on September 01, 1999. He was granted leave for one month on March 11, 2001. While on leave, he met with an accident and suffered "fracture tibia and fibula (Rt.)" for which he was treated first at Civil Hospital, Anandpur Sahib and thereafter at Military Hospital at Chandimandir, Panchkula. He joined his duties after he was discharged from Military Hospital, Chandimandir, and remained in his Unit for about one year. After that, when his injury did not heal and aggravated, he was presented before the Medical Board and was declared to be in medical category S.H.A.3, P.E. (Permanent). He was discharged from the Army on November 31, 2003, as per Medical Board's opinion. The petitioner served the Army for about four years and three months, but was not granted disability pension, consisting of both service element and disability element, after his discharge from service. On June 14, 2004, the disability pension claim of the petitioner was rejected holding that the disability was of a constitutional order, which was neither attributable to nor aggravated by military service. The petitioner submitted appeal which was rejected.

8. No doubt, when the petitioner met with an accident, he was on annual leave, but the accident was beyond control of the petitioner who was not performing any act he ought not to have done. In view of the settled law by the Apex Court, a person on casual/annual leave is deemed to be on duty and there must be apparent nexus between normal living of person subject to military law while on leave and injuries suffered by him. A person on annual leave is subject to Army Act and can be recalled at any time as leave is at discretion of authorities. This was so held by a Division Bench of Delhi High Court in Ex-Sepoy Hayat Mohammed's case (supra). In that case, the petitioner was on leave at his home town. While he was in his house, a huge steel beam and a cemented stone fell on the petitioner from the roof of the house, which was being repaired. This resulted in total paralysis of three fingers of his right hand and amputation of left hand. The petitioner was treated and was placed in permanent low medical category "EEE". He was discharged from military service and rejected disability pension. His writ petition was allowed and the respondents were directed to consider and grant disability pension to the petitioner. With advantage, we may also refer to the authority reported as Madan Singh Shekhawat Vs. Union of India and Others, where the Hon'ble Supreme Court held that an army personnel is deemed to be on duty when he is on any type of authorised leave during travelling to or from home or while on casual leave. In this case, as stated above, the petitioner had remained in his Unit for about one year after he was discharged from Military Hospital. However, his injury aggravated and he was discharged by the Release Medical Board.

9. Regulation 179 of the Pension Regulations deals with the issue at hand and it reads as under:

179. An individual retired/discharged on completion of tenure or on completion of

service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 per cent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

2. The disability element referred to in Clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

10. A perusal of the above provisions of Regulation 179 of Pension Regulations leaves no room for doubt that the petitioner was invalidated out of service. The petitioner sustained injury/disability during his service engagement although being on annual leave, and the disability would be deemed to be attributable to and aggravated by military service. In this view of the matter, we have no hesitation in holding that the petitioner will be deemed to have been invalidated out of service and is entitled to disability pension as is admissible to defence personnel who are invalidated out of service.

For the aforesaid reasons, this writ petition is allowed and the petitioner is held entitled to 20% disability pension, consisting of both the elements i.e. service and disability element. This pension, with all consequential benefits, will be paid to him from the date of his retirement. The respondents shall pay all the arrears to the petitioner within two months from the date of receipt of a copy of this order, failing which the petitioner will be entitled to interest at the rate of nine per cent annum.