

(2008) 10 AHC CK 0143
In the Allahabad High Court

Hakim Singh Chahar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Citation : (2008) 6 AWC 6380 : (2009) 120 FLR 27

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri G.D. Mukerji, learned Counsel for the petitioner and Sri S.K. Rai, learned Counsel appearing on behalf of the respondents.

2. Counter affidavit, rejoinder affidavit, supplementary counter affidavit and supplementary rejoinder affidavit have been exchanged between the parties.

It has been brought to the notice of the court that after filing of this writ petition the petitioner had died on 30.4.1997 and his heirs and legal representative have been brought on record.

3. According to the petitioner he had joined the Indian Navy on 15.1.1969 and was discharged on 8.4.1978. After discharge from the Indian Navy he was enrolled in the Defence Service Corps (DSC) on 6.3.1982 and served there upto 3.8.1986 when he was discharged under the Army Rule 13 III(iii). The petitioner has subsequently amended this writ petition when he was served with the order of discharge on medical grounds and rejection of his appeal filed against such orders.

4. According to learned Counsel for the petitioner the respondents had not served such orders upon him but they came up with the order rejecting his claim for disability pension in the counter affidavit hence he had to amend his writ petition. The submission of learned Counsel for the petitioner is based on the provisions of Pension Regulation for the Army, 1961 Part I and he has relied upon

the Regulation 173 and Rule 5 to the Medical Officers (Military Pensions) Rules 1980 as amended from time to time. According to him, the Regulation provides that unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The said disability is to be determined under the rule in Appendix II. He states that the provisions of Appendix II are the entitlement for casualty pensionary awards and have to be read in conjunction with the guide to the Medical Officers (Military Pensions) Rules wherein Rule 5 has prescribed for a presumption upon which casualty pensionary award and evaluation of the disability has to be done. He states that Rule 5 specifically provides for the period prior to or during the service where a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

5. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service. According to him, under Rule 9 the claimant shall not be called upon to prove the conditions of entitlements and he will be entitled to the benefit of any reasonable doubt. Such benefit should be given liberally to the claimants. He submits that under Regulation 178 even after discharge the claim has to be liberally considered and Rule 14 of Rules provides for specific case with respect to the disease. He placed reliance upon paragraph 35 of Chapter VI of Guide to Medical Officers (Military Pensions) 1980 to show the circumstance under which usual claim arises. He has referred to the nature of his duty in the DSC which involves continuous patrolling duties in hazardous areas and the mental disorder can be attributed; to such service.

6. The petitioner alleges that he was diagnosed with schizophrenia in the year 1983 after he had entered the service of DSC and was receiving treatment at the time of posting till the date of discharge in the year 1986. He contends that the disability assessed was at 40% for two years while the normal requirement for the grant of disability pension is 20%. He has placed reliance upon the report of the Invalidating Medical Board which has opined that the petitioner did not suffer from any such disability at the time of his joining the DSC. The petitioner alleges that there is no family history of mental illness and therefore the conclusion of the Medical Board that the disease of the petitioner is constitutional in nature is wrong and can not be read against the petitioner.

7. It is stated that he was never re-examined for the purpose of pension by the pension authority and hence when the respondent had failed to produce any record of such physical re-examination he could not have been denied the disability pension. The allegation of bias has also been argued against the commanding officer and it is stated that he had never fought any war nor was posted in high altitude areas.

8. However in view of para 35(a) and (b) the the circumstance of stress factor, genetic factor and the time factor were required to be considered. The prolonged treatment of the petitioner in the psychiatric ward following his conflict with the commanding officer and his involvement in long patrolling duties for 12 hours continuously were responsible for his illness and it has got aggravated due to his military service.

9. The respondents have contested the claim of the petitioner in their counter affidavit and supplementary counter affidavit. Sri S.K. Rai, learned Counsel has placed reliance upon the medical board proceedings which have been filed alongwith supplementary counter affidavit as annexure-1. He has referred to the opinion of the medical board which indicates that the disease schizophrenia occurred in December 1983 at the place of his posting. He has referred to the opinion of the psychiatric to say that there is no family history of mental illness and there is no history of drug abuse. He has referred to Part III of the medical board report and states that it was their opinion that the disability did not exist before entering the service was recorded as not connected with service.

10. He has also referred to paragraph 8 of the supplementary counter affidavit to state that the petitioner has neither fought any war during DSC service nor was he ever posted to high altitude areas. It has been stated that no other personnel from his unit has suffered from similar type of disease due to normal duties since DSC personnel are almost always detained for normal guard duties. According to him the disease of the petitioner came to light in the year 1983 in peace area and he was hospitalised from time to time and was ultimately examined by the medical board at Jabalpur Medical College on 20.6.1986. He states that if the disease is accepted for the reason "in service" it must be established with condition of military service.

According to him, unless these conditions are satisfied it can not be said that the substance of disease is perse on account of military service.

11. Learned Counsel for the petitioner has placed reliance upon a decision of a Division Bench of the High Court of Delhi in the case of Ex Sepoy Gopal Singh Dadwal v. Union of India and Ors. reported in Military Law Journal 2006 Delhi 185 and submits that the court found that each petitioner was medically fit at the time of joining the service and disabilities arose much later while in service in different areas where the conditions of service influenced subsequent course of disease hence it would fall in the category of aggravation. According to him the court found that the conclusion of the medical board has to be supported by proper reason or documentation.

12. He has also placed reliance upon a decision of a learned Single Judge in the case of P.P. Chandran v. Union of India and Ors. repotted in Mill. L.J. 2004 Ker 52 to state that the initial onus of proving that the disability is not attributable to Army Service shall be on the authority and if such onus has not been discharged the claimant would be entitled for such disability pension. According to him in the

case of P.P. Chandran (supra) he was also suffering from the very same disease and was discharged on the ground of constitutional disorder related to service.

13. He has also referred to a judgement of a learned Single Judge of this court in the case of Nishan Singh v. Union of India Writ Petition No. 20205 of 1994 decided on 31.1.2006 relating to similar circumstances.

14. Learned Counsel for the respondents on the other hand has placed reliance upon a decision of the Hon"ble Supreme Court in the case of Union of India and Ors. v. Keshar Singh reported in (2007) 2 UPLBEC 1342 and in the case of Controller of Defence Accounts (Pension) and Ors. v. S. Balachandran Nair reported in 2005(7) SC 129 to contend that in the very same circumstance where the Medical Board opined that the claimant was not suffering from the disease prior to joining in the military service but held that the illness was not attributable to military service and he was declared unfit for continuance in service. The Hon"ble Supreme court held that when the Medical Board categorically opined that the disease is not attributable to the military service the claimant could not be directed to be paid the disability pension.

15. He has also placed reliance upon a decision of this court in the case of Union of India and Ors. v. Dan Singh passed in Special Appeal No. 586 of 2006 decided on 30.8.2008 wherein the decision in the case of Nishan Singh (supra) has been considered and it was held by this court that the writ court can not sit in appeal over the decision of the Medical Board. According to him, Sri Dan Singh assailed the order dated 30.8.2008 passed in Special Appeal before the Hon"ble Apex Court which appeal was dismissed and the order of the Division Bench was affirmed.

16. From the aforesaid circumstance it is quite clear and while considering a case of the disease "schizophrenia" mental disease the Hon"ble Supreme Court in the case of Keshar Singh has clearly laid down in paragraph 11 which is quoted hereunder:

In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the Military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment already made to the respondent by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs.

17. Under such circumstance while going through the opinion of the Medical Board filed as annexure-CA1 it will be seen that the opinion of Medical Board is quite clear that the disease it is not attributable to military service although the claimant was not suffering from such disease prior to joining the military service. Under such circumstance the opinion of the Medical Board can not be upset by this court in writ jurisdiction where it has recorded that the disease is

constitutional in nature and not as a result of military service.

18. The Hon^{ble} Supreme Court had considered the provisions of para 7(b) and 7(c) of Appendix II and held in paragraph 5 as quoted here under:

A bare reading of the aforesaid provision makes it clear that ordinarily if a disease had led to the discharge in individual it shall ordinarily be deemed to have arisen in service if no noted of it was made at the time of individual's acceptance for Military service. An exception, however, is carved out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, Clause ? of Rule 7 makes the position clear that if a disease is accepted as having arisen in service it must also be established that the conditions of service determined or contributed to the onset of the disease and that the conditions are due to the circumstances of duty in Military service. There is no material placed by the respondent in this regard.

19. While considering the provisions of Regulation 173, Appendix II and Regulation 423 the decisions in the cases of Union of India (UOI) and Another Vs. Baljit Singh, and Union of India (UOI) and Others Vs. Dhir Singh China, Colonel (Retd.), were referred and the relevant paragraphs were quoted therein. Paragraph 6 of Baljit Singh's case (supra) reads as follows:

It is seen that various criteria have been prescribed In the guidelines under the Rules as to when the disease or injury is attributable to the Military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to wound, injury or disease which is attributable to Military service or existed before or arose during Military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made ample clear from Clauses (a) to (d) of para 7 which contemplated that in respect of a disease the Rules enumerated thereunder required to be observed. Clause (c) provides that if a disease is accepted as having arisen in service, it must also be established that the conditions of Military service determined or contributed to the onset of the disease and that the conditions were due to the circumstance of duty in Military service. Unless these conditions satisfied, it can not be said that the sustenance of injury per se is on account of Military service. In view of the report of the Medical Board of Doctors, it is not due to Military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of Military service. In each case, when a disability pension is sought for made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to Military service or was aggravated which contributed to invalidation for the Military service.

20. Paragraph 7 of Dhir Singh China's case (supra) was quoted which is as

under:

That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by Military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by Military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by Military service. Clearly, therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by Military service and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted.

21. From the law laid down as referred to above the conditions of Regulation 173 have to be satisfied to make the claimant entitled to disability pension. It has to be established that the conditions of military service determined or contributed to the onset of the disease and the conditions of military service were such that the disease occurred.

22. In the present case the respondents have clearly detailed the nature of duties to be performed in DSC. Such details are available in paragraph 8 of the supplementary counter affidavit. The paragraph itself is quoted here under:

That the deponent is further advised to state that the petitioner had neither fought any war during DSC service nor was he ever posted to high altitude area or Glaciers. It is further relevant to mention here that no other personnel from his unit did suffer from similar type of disease due to normal duties. DSC personnel are almost always detained on normal guard duties. Throughout his DSC service, petitioner was employed on sheltered appointment as guard duties with units located in the peace area.

23. On the other hand the petitioner has referred to a conflict with his Commanding Officer as a reason for his mental condition. He has referred to Rules 14 and 15 and paragraph 35 of Chapter VI of Guide to Medical Officers (Military Pension) 1980. A perusal of the said provisions indicates that facts must be established for their application in each particular case. A vague or general averment made by the petitioner would not attract the circumstances as detailed thereunder. The usual circumstances which give rise to a claim require to be

established and in any case the petitioner clearly states that the disease of schizophrenia is not mentioned as usual circumstance to give rise to a claim for disability pension.

24. Therefore in view of the nature of duties required to be performed by the petitioner it can not be held that it was his service which resulted in his developing the disease. There is no material on record nor any convincing averments in the pleadings to hold that the petitioner acquired the disease due to the conditions of his service. Moreover the report of the Medical Board has not been questioned by the petitioner nor challenged in this writ petition.

25. For the aforesaid reasons this writ petition has no force and is accordingly dismissed. No order is passed as to costs.