

(2001) 02 P&H CK 0142
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5436 of 1997

Harsharan Kaur

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Army Pension Rules, 1961 — Rule 14, 7
Constitution of India, 1950 — Article 226, 227
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2001) 02 P&H CK 0142

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Mr. S.S. Kaliraman, for the Appellant; Mr. C.M. Sharma, for the Respondent

Judgement

Swatanter Kumar, J.—This petition has been filed by Mrs. Harsharan Kaur for and on behalf of her husband Shri Balbir Singh, who is stated to be of unstable mind and is even presently under treatment, under Articles 226/227 of the Constitution of India, for quashing of an order dated 8.2.1993 and 9.8.1996 Annexures P/2 and P-3 to the petition vide which her husband was denied the disability pension. However, claim of invalid gratuity and death-cum-retirement gratuity was allowed by the CCDA (P) Allahabad vide the same order.

2. Petitioner was enrolled as a member of the Indian Army as Sepoy in the corps of Signals on 27.9.1982. He served in different units at different places. Somewhere on 3.4.1989 he had fallen from the stairs and suffered a fracture of ankle and sustained other injuries Prior thereto he was treated in the Army Hospital for Myalgia Chest. Thereafter he was transferred to field job in August, 1989. He was awarded seven days punishment at Jabalpur in March, 1991. He left the place of duty without leave. He fell sick at home and thereafter was treated at Army Hospital, Patiala and then at Command Hospital, Chandi Mandir and was finally discharged from Army on medical grounds as suffering from Schizo Affective Psychosis on 20.5.1992. He submitted his claim for grant of

disability pension on 19.10.1992 vide Annexure P/1 to the petition which was rejected vide Annexure P/2 on 8.2.1993. The wife of said Balbir Singh preferred on appeal on 5.9.1994 which was also rejected vide order dated 9.8.1996.

3. It may be mentioned at the very outset that two different reasons were given for rejecting the grant of disability pension to the petitioner vide two different orders.

Petitioner was enrolled as a member of the Indian Army as Sepoy in the Corps of Signals on 27.9.1982. He served in different units at different places. Somewhere on 3.1.1989 he had a fall from the stairs and suffered a fracture of ankle and sustained other injuries. Prior thereto he was treated in the Army Hospital for Myalgia Chest. Thereafter he was transferred to field job in August, 1989. He was awarded seven days punishment at Jabalpur in March 1991. He left the place of duty without leave. He fell sick at home and thereafter was treated at Army Hospital, Patiala and then at Command Hospital, Chandi Mandir and was finally discharged from Army on medical grounds as suffering from Schizo Affective Psychosis on 20.5.1992. He submitted his claim for grant of disability pension on 19.10.1992 vide Annexure P/1 to the petition which was rejected vide Annexure P/2 on 8.2.1993. The wife of said Balbir Singh preferred an appeal on 5.9.1994 which was also rejected vide order dated 9.8.1996.

4. It may be mentioned at the very outset that two different reasons were given for rejecting the grant of disability pension to the petitioner vide two different orders.

In the order dated 8.2.1993, reason given for rejecting the claim of petitioner's husband for grant of disability pension is as follows :-

"Your disability pension claim has been finally rejected by CCDA (P) Allahabad the pension sanctioning authorities, vide their letter No. G-3/57/734/10- 92/ Signals dated 15th Jan. 93 as it has been decided that disability viz Schizo Affective Psychosis from which suffered during service in the Army on which your claim is based -

(A) is not attributable to military service;

(B) does not fulfil the conditions namely that it existed before or arose during military service and has been remained aggravated thereon.

(C) is attributable or aggravated by service assessed as less than 20% (i.e.....for.....years). You would be brought before the survey medical board. You should therefore intimate your postal address and nearest railway station to (his office by..... Therefore, you are not entitled for any disability pension under rules."

However, in the appellate order dated 9.8.1996 different reasons were given for rejecting the claim which reads as under :-

"Your husband was released from service on account of invaliding disease (ID)

Schizo Affective Psychosis. The disability on account of which your husband was released from service is a constitutional disorder. On perusal of my husband's service/Medical documents, the Appellate Medical Authority has found that the on set off ID was in April, 1991 at his native place while he was on AL. There was no field service in close time relationship to onset off ID. There was no delay in diagnosis and treatment. There is no evidence of any service aggravating factors. There was no head-injury or service debilitating illness prior to onset of ID. Your husband ID was a result of some domestic issues. In view of the fact that your husband's disability has been regarded by the Medical Authorities as neither attributable to nor aggravated by duties of Military service, your husband is not entitled to Disability pension under the Rules."

5. It is also not disputed in the counter affidavit/written statement that the petitioner was enrolled in the Indian Army after he was found fit to the stringent medical parameters provided for such purpose. He served for a considerable period without any medical problem. He fell sick in the year 1989 i.e. after 7 years of his joining the army for the first time and was treated for Myalgia Chest and fracture of ankle. Again he was declared fit to perform his duty by the medical board and rejoined his duty in 1989 itself. No record has been produced nor even definite averments has been made in the written statement by the respondent that the husband of the petitioner was suffering from any ailment at the time of joining the army and in fact nothing of this kind much less disease for which the petitioner has been invalidated out of the army could be said to be not attributable or not aggravated by the army service. The onus was on the authority to show that the petitioner was suffering from such disease at the time of joining of the army or immediately thereafter.

6. Keeping in view of the facts and circumstances of the present case and the fact that the petitioner had put in 10 years of service, before his discharge from the army in 1992, I find it very difficult to hold that the petitioner has misrepresented to the army authority or was suffering from Schizo Affective Psychosis at the time of his joining army or even subsequent thereto. He developed this problem somewhere in 1991. Then he was found to be sick for mental depression.

7. Learned counsel for the Union of India half heartedly contended that the disease from which the petitioner was suffering was constitutional one and was not attributable or aggravated to army service deserves to be rejected. In view of the settled view taken by the Hon"ble Apex Court as well as by various Division Benches of this Court.

8. Learned counsel for the petitioner has relied upon the judgment of this court in the case of Dalbir Singh v. Union of India and others 2000(1) SCT 392 (P&H) : 2000(1) P.L.R. 507 (Pb.& Hry.) where the court held as under :-

"In view of the various judgments cited and for obvious reasons, I would be inclined to accept the contention raised on behalf of the petitioner. A candidate,

who wishes to join Indian Army, can offer himself for a medical examination as per the strict standard prescribed by the Army and which are ought to be adhered to by its Medical Officers/Medical Board. Obviously there is also an obligation upon the petitioner to disclose all correct facts within his knowledge. Once the petitioner had done so, no fault can be found with his conduct. As already noticed, nothing depicts from the entire service record of the petitioner that he had been ailing from this disease prior to 1995. In the case of *Om Parkash v. Union of India* 1998(3) SCT 662 (P&H) ; CWP No. 14106 of 1996 decided on 18.4.1998, the court in a case of discharge on the ground of Epilepsy from the Border Security Force held as under :-

"The confidential proceedings of the Medical Board reveal that the petitioner was suffering from Grand Mal Epilepsy and was unfit for further service. In column, 2 it finds clear mention that the disability had been contracted while in service though it could not be directly attributable to service conditions. In column 6 however it has been categorically stated that although the disease was not directly attributable to service, it had been aggravated by the stress and strain of service conditions. While dealing with rule 14 of the Pension Regulation for the Army, 1961 (earlier rule 7), which is couched in exactly the same terms as guideline 5, it has been held in *Mohan Lal v. Union of India and others* 1995(4) SCT 754 (P&H) (DB) : 1995(5) SLR 183 and *Union of India v. Shyam Lal Malhotra* 1995(6) SLR 405, that if a disease had not been noted at the time of the claimants initial entry into service, the presumption which was, however, rebuttable was that the disease has been contracted during service. The case of the petitioner is on a better footing as the Medical Board clearly opined that the petitioner's disease had been aggravated by the stress and strain of service conditions."

9. It is conceded before me by the learned counsel for the parties that LPA being No. 359 of 1998 preferred by the Union of India in the case of *Om Parkash* (supra) was dismissed by the Division Bench of this Court and the judgment has attained finality. Reference can also be made to another Division Bench judgment of this Court in the case of *Union of India v. Gurnam Singh*, 1998(2) RSJ 478: 1999(1) SLR 406 (P&H).

The above referred judgments are of the Division Bench and are binding on this Court."

10. Reference can also be made to the judgment of this court in the case of *Ram Mehar Singh Ex. Hav. v. Union of India* 2000(3) SCT 190 (Pb. & Hry.), where, while following the different judgments, it was held that schizophrenia could be aggravated and attributable to army service.

Reference can also be made to the case of *Satnam Singh Bajwa v. Union of India* 2000(3) S C T 1952, where the court held as under :-

"On the contrary, the learned counsel for the petitioner has brought to my notice an order of the Hon"ble Supreme Court passed in case *Union of India v. Inder*

Dutt Sharma in which the Hon''ble Supreme court has affirmed the judgment dated 26.9.1997 passed by the Delhi High Court in C.W.P.No. 3345 of 1995.

There is nothing on the record to indicate that when the petitioner joined the Indian Air Force, he was suffering from any disability. It is difficult for this Court to hold that the disease of which the petitioner was suffering was a constitutional one.

The learned counsel for the petitioner also relies upon a Division Bench of this Court, reported as 1998(4) RSJ 467, Union of India v. Ex-Sepoy Satwinder Singh through his wife Smt. Kulwant Kaur.

11. Keeping in view the peculiar facts and circumstances of the case, the stand taken by the respondent in the reply and the principle of law settled by the courts, as afore-referred, I have no hesitation in quashing the impugned order dated 8.2.1993 and 9.8.1996, Annexures P/2 and P/3 respectively and further directing the respondents to consider the case of the petitioner for grant of disability pension in accordance with the rules within a period of three months from the date of this order. The petitioner may also serve a copy of this order upon the concerned authorities.

Consequently, the writ petition is allowed in the above terms. However, leaving the parties to bear their own costs.

12. Petition allowed.