

(1999) 12 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3148 of 1999

Hav. Ram Mehar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2000) 125 PLR 269

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : R.N. Lohan, for the Appellant; Anil Malhotra, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The petitioner was enrolled as a member of the Indian Army on 5.1.1976 after having been subjected to the prescribed medical test and found fit in all respect. He continued to serve the Army. Unfortunately, the petitioner suffered Paranoid Schizophrenia in the year 1992 and remained hospitalised in the Military Hospital, Dehradun from 1.7.1992 to 6.7.1.992 due to depression. There he was placed under Low Medical Category. The ailment of the petitioner did not recover but the same was aggravated and finally the Army authorities discharged the petitioner from Army on 23.3.1993. The petitioner was placed in Medical Category of "EEE" i.e. the lower medical category and his disability was assessed by the Medical Board concerned more than 60%. The petitioner requested for grant of disability pension, which was recommended by the Unit Incharge and all relevant papers were forwarded to respondent No. 3, who vide his letter dated 6.5.1994 rejected the request, which was conveyed to the petitioner, vide order dated 11.1.1995. The petitioner also preferred an appeal against the order dated 11.1.1995, which, too, met the same fate and was rejected by the Appellate Authority vide its order dated 6.11.1996 giving rise to the present writ petition.

2. Upon notice, the respondents filed a detailed reply. The facts are hardly in

controversy. In paragraph 1 of the preliminary objections, the respondents have stated as under:-

"On 11th October, 1992, he was again admitted in Military Hospital Meerut due to PARANOID SCHIZOPHRENIA 295 (Relapse) and was transferred to Military Hospital Bareilly on 13th October, 1992. He was declared a case of "PARANOID SCHIZOPHRENIA (295). He was recommended fit to be invalided in Medical Category "EEE" by a medical board held in Military Hospital Meerut on 19th February, 1993. The cause of his disability given by medical board was constitutional disorder not connected with service. Accordingly he was invalided out of service with effect from 23rd March, 1993 under item (III) (iii) of Rule 13(3) Army Rule 1954 and his disability was assessed 40% for five years."

3. Another document that needs to be referred to at this stage is the order dated 6.11.1996 issued by the respondents to the petitioner. They took up the plea that the disease was related to bodily structure. The relevant part of the said order runs as under:-

"You were released from Army on Medical Ground due to disease of Paranoid Schizophrenia. The disability of which you were released from service on medical ground, that disease is concerned with bodily structure. After scrutinize of your documents regarding service/medical appeal, medical officer has found that your disease started in May, 1992 in peace area. The service rendered by you in field has no concern with the originating of this disease."

4. As is clear from the afore-narrated pleadings of the parties, the only question that falls for determination before this Court is whether Paranoid Schizophrenia is a disease attributable or aggravated to Army service or not. The respondents pleaded the same to be a bodily or constitutional disability. The other, ingredients of paragraph 173 of the Pension Regulations for Army Part-1 are fully satisfied. The petitioner was recruited in the Army subject to prescribe medical standard and was found fit in all respect. The disability has been described to be more than 40% though in the documents placed on record it is shown to be more than 60%. A Division Bench of this Court in the case titled as Union of India and Ors. v. Ex. Sepoy Satwinder Singh through his wife Smt. Kulwant Kaur and Anr., 1998(4) R.S.J. 467 answered this question in favour of the petitioner. The Court commenting upon the aggravation or attributability of Schizophrenia to the Army service held as under:-

"These decisions amply support the view taken by the learned Single Judge that the respondent No. 1. who was boarded out of service on being placed in medical category EEE with 70 per cent disability due to Schizophrenia entitled to get medical pension because at the time of his acceptance for military service no note was recorded that he was suffering from such disease and the opinion recorded by the Medical Board at the time of his discharge from service did not contain a note that the disease was such which could not be detected at the time of petitioner's entry in the service. The learned Single Judge was distinguished

the judgment of the Supreme Court in *Union of India v. Baljit Singh* (supra) by observing that their Lordships were dealing with a case of injury and not of disease and further that various rules of Appendix-II must be read together and unless the concerned authorities can establish that the disease was constitutional, benefit of disability pension cannot be denied. Some of the observations made by the learned Single Judge with whom we are in complete agreement, read as under:-

"Mr. Dahiya's reliance on *Baljit Singh*'s case (supra) is, to my mind, misplaced on facts as that was a case dealing with an injury and not a disease. It is the conceded proposition that Sub-rules (a) to (c) of Rule 14 (earlier Rule 7) must be read together and it must be established amongst other things that the conditions of military service had determined or contributed to the onset of the disease or its aggravation, but it must, nevertheless be borne in mind that onus to deny a claim rests on the authorities and not on the claimant as postulated by Rule 9 which provides that the claimant shall not be called upon to prove the conditions of entitlement and that he will receive the benefit of any reasonable doubt and that this benefit would be given more liberally to the claimant in the field/afloat service cases. It will be seen from the record that the Medical Board had, while rejecting their claim, merely observed "constitutional disease, hence not connected with the service." To my mind, the onus put on the authority under Rule 9, could not be said to have been discharged in this situation, more particularly as the Board did not consider that he had put in service almost continuously in the field, and as such the case for the grant of disability pension was to be considered more liberally."

5. I may also make reference to another judgment of the same Division Bench in the case titled as *A.J.S. Chaudhary v. Union of India and Ors.*, 1999(1) R.S.J. 778, wherein while granting the relief of disability pension to the petitioner, the Court held as under:-

"The ratio of the decisions, referred to herein above, fully support the argument of Shri Randhawa that the rejection of petitioner's claim for disability pension is legally unsustainable because at the time of his acceptance for military service, no note was recorded that he was suffering from Schizophrenia and the opinion recorded by the Medical Board at the time of his discharge from service does not contain a note that the disease was such could not be detected at the time of petitioner's entry in the service."

6. The above two decisions of the Division Bench of this Court give a clear answer to the matter in issue. In fact, it is no more *res integra* and stands fully settled by the above judgments of the Division Bench.

7. For the reasons aforesaid, the writ petition is allowed. The impugned orders dated 11.1.1995 (Annexure P-3) and 6.11.1996 (Annexure P-5) are hereby quashed. The petitioner is entitled to receive disability pension in accordance with rules. The respondents are directed to grant disability pension to the

petitioner in accordance with rules. There shall be no order as to costs in the facts and circumstances of the case.