

(2001) 07 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7353 of 2000

ICE 29849 Maj. Anil Kumar Bawa (Retd.)	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Defence Service Army Regulations, 1987 — Regulation 53
Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 14, 17, 27
Pension Regulations for Army, 1961 — Regulation 173, 27(C)

Citation : (2001) 07 P&H CK 0053

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : Mr. Sandeep Bansal, for the Appellant; Mr. M.S. Guglani, Addl. Central Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.S. Narang, J.—The petitioner was commissioned in the Army on March 15, 1970 and at that time was found medically fit for service of the Army. During the service rendered he earned promotions upto the rank of Major in the year 1980. It was in December 1980, the petitioner was posted at Ambala and while performing his duties in his office developed acute low back ache and was admitted to Military Hospital, Ambala. It was diagnosed that the petitioner is a case of Fibre Fascitis Moderate and later specified as Proplase Disc L5 S1(OPTD).

2. The Court of Inquiry was ordered to enquire into the circumstances under which the petitioner sustained injury while being on duty. The finding was given by the Court of Inquiry on February 10, 1981. It shall be apposite to note the findings of the Court of Inquiry, which read as under :-

Finding of the Court

(a) Capt AK Bawa came on duty on 1 Dec 80 in his office at the routine time.
(Witness No. 1)

(b) At about 1130 hrs the same day Fit Lt.. S. Goswamy of HQ 55 MC Area also visited Capt A.K. Bawa on official matters (Witness No. 1 and 2).

(c) After some time, in order to find out progress of a special train passing through Ambala Cantt, Capt AK Bawa wanted to get up from his chair to sue an adjacent telephone. (Witness No. 1 and 2)

(d) Capt A.K. Bawa felt a jerk in his back and got an agonising pain as a result he could not get up from his chair. (Witness No. 1 and 2).

(e) Capt A.K. Bawa was admitted in Military Hospital from 10 Dec 80 to 23 Dec 80 due to moderate injury Fibro Fascitis back as classified by medical auth in the injury report initiated on the officer. (Witness No. 1)

(f) IC-39849x Capt A.K. Bawa sustained moderate injury Fibro Fascitis in his back on 10 Dec. 80. The injury was sustained while on duty (Witness No. 1 and 2)

Presiding Officer Sd/- (IC-26108P Maj Karan Singh) Members 1. Sd/- (IC-32552F Cap HS Sahi) 2.Sd/(JC-70358W Sub AS Chhatwal)

3. It was again in 1981 the petitioner fell ill and was subsequently transferred to Army Hospital, Delhi Cantt where he was operated upon. The medical category of the petitioner was downgraded referring it to be S1H1A1P4 (T-6) E1. The Medical Board was constituted on January 30, 1982, and pursuant to the findings, the aforesaid medical grading was accorded. The Board had specifically mentioned that the injury is directly attributable to service and aggravated thereto and it has been mentioned that it is on account of stress and strain of military service. The observation made by the Board was ordered to be corrected by the petitioner and it was carried out by way of amendment. The relevant excerpt of the amendment reads as under:-

"Amendments"

In Column 3 part of AFMSF-15 dated 30 Jan 82 for "No" read "Yes", Column 4 Part-II of AFMSF-15 dated 30 Jan 82 for "NA" read "As a result of injury sustained on military duty in peace at Ambala on 10 Dec., 1980. Injury report (IAFY-2006) initiated on 22 Dec., 80 Column 5 Part-II of AFMSF-15 dated 30 Jan 82 for "by stress and strain of military service" read "NA".

4. The petitioner was finally ordered to be retired from service on superannuation on January 31, 1998 and that the petitioner was directed to appear before a Release Medical Board and the petitioner was categorised as S1H1A3P1E1 and he was diagnosed as a case of "Disc Prolapse with Sciatica". The disability was determined as 62%. The petitioner requested for disability pension and in response thereto the respondents communicated that the petitioner was not entitled to disability pension since the ID(s) as recorded in the Release Medical Board have not been found to be attributable to or aggravated by military service. The petitioner filed an appeal before the Ministry of Defence and that the

appeal was rejected vide order dated November 29, 1999. It has been categorically opined in the impugned order that the disability is on account of constitutional disorder as Appellate Medical Authority has found that onset of ID was in peace area and that there is no history of trauma. Thus, on the finding of Appellate Medical Authority the petitioner would not be entitled to disability pension.

5. Aggrieved of this order, the present petition has been filed. The petition was admitted vide order dated January 1, 2000 and the respondents were directed to file written statement accordingly.

6. The stand of the respondents is that the petitioner is not entitled to disability pension as the diseases from which he has suffered is not attributable to or aggravated by military service and that in fact the disease suffered is on account of constitutional disorder. There has not been any history of trauma. The excerpt of the order passed by the Medical Authority has been incorporated in reply to para 9 of the written statement which reads as under :-

"Officer was detected to have ID in 1981 when he reported to hospital with history of backache of several years. Myelogram revealed PIVD/L5SI/ Laminectomy done on 12.1.82 and made good recovery. He has recurrence of symptom in the form of pain. Myelogram claim in 1985 revealed dense scarring operated again in 1987. Review by Neuro Surgeon in 1989 revealed of spinal movements. SLR 45 bilateral. EHL left GD 11/VI. Sensory deficit and arachnoiditis. At RMB had slow backache local Exem. scarce, spinal movements restricted FID3jt SLR 70 Degree left quadriceps and leg muscle wasting by 2 cms and 1 cms respectively/LT ankle jerk absent. X Ray evidence of the laminectomy and spondylotic changes."

"ID is a constitutional disease. No definite history of his documents. Onset is in peace area and he was in sheltered appointment after onset. In view of the above ID is considered not connected with the Military Service."

7. The stand is that on account of the finding returned by the Appellate Medical Board, the petitioner is not entitled to disability pension as he does not fulfil the primary condition for the grant of disability pension as contained in Army Regulations 1961 (Part-I) -

8. Further the plea is that if an officer suffers from constitutional disorder such officer is not entitled to disability pension and that the disability if it is constitutional in nature as per Rule 14b and 14c of the Entitlement Rules 1982 as amended vide Ministry of Defence letter No. 1 (1)/81/D(EN-C) dated 20.6.1996, the officer is not entitled to disability pension.

9. It is also contended that the assessments made by LIMB/RMB/RSMD are only recommendatory in nature and are subject to review by competent Medical Authorities under Rules 17 and 27(c) of the Entitlement Rules, 1982. In this regard reference has been made to the instructions of the Govt. of India

contained in the letter dated June 21, 1996, the excerpts of which has been annexed as R2.

10. It shall be apposite to notice the corrigendum which has been relied upon copy Annexre R1, which reads as under :-

Corrigendum

1. The following amendments are made in Rule 14 of Entitlement Rules, 1982 issued vide Appendix to this Ministry letter No. 1(1)/81/D(Pen-C) dated 22.11.83 modified vide corrigendum No. 1(1)/81/D(Pen-C) dated 3.2.92 and amended vide addendum No.1(1)/81/D(Pen-C) dated 24.8.92.

The existing Rule 14 may be submitted as under :-

in respect of disease, the following rules will be observed :

a. For the acceptance of a disease as attributable to Military Service, the following two conditions must be simultaneously :

i. That the disease has arisen during the period of Military Service, and

ii. That the disease has been caused by the conditions of employment in Military service.

b. If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment 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 case where it is established that the conditions of military service did not contribute to the onset or adversely affect the course of disease, entitlement for casualty pensionary award will not be conceded, even if the disease has arisen during service.

c. Cases in which it is established the conditions of Military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis or aggravation.

d. In case of congenital, degenerative and constitutional disease which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service.

2. Those provisions will be effective from the date of promulgation of the Entitlement Rules, 1982. The pending cases shall be decided as per these provisions.

3. This issues with the concurrence of Ministry of Defence (Financial/Pension) vide their UO No. 1104/Pen of 1996.

Sd/- (P.K. Kataria) Deputy Secretary to Govt. of India

Chief of the Army Staff

Chief of the Naval Staff

Chief of the Air Staff

11. Learned counsel for the petitioner has argued that the petitioner suffered injury during the course of performance of his duty as Military officer. Admittedly he was in service on December 10, 1982 when he had suffered the injury. All along it has been found as a matter of fact by the Court of Inquiry and the Medical Board that the petitioner has suffered injury which is attributable to or aggravated by military service and as a result thereof he had to undergo series of operations and he was brought into the low medical category and as a result thereof suffered the denial of future promotions in the service. Not only this, on the date of retirement also he was suffering from disability.

12. It is argued that the petitioner was never given the sheltered appointment but continued in normal course but on account of low medical category, the avenues of promotions were shut down. Since he retired upon attaining superannuation and on that date he was also suffering the disability attributable to or aggravated by military service which had been duly recorded by service medical authorities. Thus the petitioner shall be deemed to have been invalided out of service and is, therefore, entitled to be granted disability pension from the date of retirement. Reliance has been placed upon Regulation 53 of Pension Regulations for the Army, 1961 (Part-I). The said regulation reads as under :-

53. (1) An officer retired on completion of tenure or completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), is found suffering from a disability attributable to or aggravated by Military Service and recorded by service Medical authorities, shall be deemed to have been invalided 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 retiring pension/retiring 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 that disease.

Note: In the case of an office discharged on fulfilling the terms his retirement, his unwillingness or continue is service beyond the period of this engagement should not effect his title to the disability element under the provision of the above regulation".

13. It has, been argued that the Appellate Medical Authority is stated to have held that the disability is on account of constitutional disorder and that no definite history is traceable and he was in sheltered appointment after the onset, therefore, the disability cannot be stated to be connected with military service. The Medical Adviser/Appellate Medical Authority perhaps has not taken into consideration that the petitioner had suffered the disability in service and it has been consistently held by the Medical Boards that the disability suffered is attributable to or aggravated by military service. The complete order passed by the Medical Adviser has not been placed before this Court but only excerpt has been reproduced in the written statement. The perusal of the same shows that the Medical Adviser himself admits that no definite history of disability is traceable and that the factum of suffering from December 10, 1980 has not been noticed by the Medical Adviser, which admittedly had been suffered while on duty and that without any documents it has been termed as history of backache of several years. It has been further argued that the petitioner had been given sheltered appointment after onset and, therefore, it is considered not connected with military service. The material fact has not been noticed by the Medical Adviser nor any opportunity was accorded to the petitioner to clarify the entire status.

14. It is further argued that no document has been placed upon the record that the petitioner was ever given the sheltered appointment nor has ever been the case of the respondents. The respondents, therefore, came to erroneous conclusion while holding that the petitioner is not entitled to disability pension, since the ID(s) as recorded in Release Medical Board held that at the time of release of the petitioner from service, he was not found to be suffering from the disability which could be said to be attributable to or aggravated by military service.

15. It is an admitted fact that the moderate injury, as aforesaid, was suffered on December 10, 1980 while the petitioner was on duty. In fact the opinion has been that the petitioner may be invalided out of service as the army cannot grant him any further sheltered appointment. Thus, the cumulative effect is that the petitioner suffered during employment in military service and that the disability is attributable to or aggravated by military service. The authorities have come to erroneous conclusion that the disability is on account of constitutional disorder and that the disability is not attributable to or aggravated by military service.

16. Learned counsel for the respondents has argued that the petitioner has rightfully not been granted the disability pension as the Medical Adviser/Appellate Medical Authority has reversed the finding of the Release Medical Board to the effect that the disability was never suffered by the petitioner which can be stated to be attributable to or aggravated by military service. For seeking disability pension under Regulation 53, it is necessarily to be seen as to whether the disability is attributable to or aggravated by military service, if it is not, the official concerned is not entitled to disability pension. In this regard, the opinion

of the Medical Board is final and that the Medical Adviser has categorically observed that disability is on account of constitutional disorder and is, therefore, not attributable to or aggravated by military service. It is also argued that the findings of the Medical Boards are only recommendatory in nature and are subject to review by competent medical authorities. Further reliance has been placed upon the Entitlement Rules, as amended by the Ministry of Defence from time to time, the excerpt of which has been noticed above. In case where it is established that the conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, the disability pension will be considered but if the disease has arisen during service and is congenital, hereditary, degenerative and constitutional disease which is/are detected after the petitioner had joined service, in such eventuality the officer shall not be entitled to disability pension subject to an exception i.e. if it is established that course of such disease was adversely affected due to factors related to conditions of military service. It has been argued that the case of the petitioner does not fall within the ambit of four corners of the rules and regulations, as such, the petition deserves to be dismissed.

17. I have considered the rival contentions learned counsel for the parties and I find that the respondents have not produced the complete order passed by the Medical Adviser/Appellate Authority but the conclusion has been reproduced which has been noticed above. It is not discernible as to whether the factum of the officer suffering such kind of disease before joining the service stands proved or not. On the other hand the perusal of summary of the case as noticed by the Medical Board, copy of which has been appended as Annexure P3, it is observed that the 34 years old officer; i.e. the petitioner, has been having low backache for the last several years treated as fibro fascitis and that he was operated on November 25, 1980, for pile nidle sinus. It is only for the last three months that severe backache prior to the occurrence i.e. December 10, 1980 had been found. It has also been observed that it is on account of stress and strain of military service that the petitioner had suffered. Thus, the conditions of military service influenced the course of disease and which ultimately culminated into disability. The perusal of the clarificatory instructions which have been reproduced above shows that for acceptance of a disease attributable to or aggravated by military service, two conditions must be fulfilled i.e. (i) the disease has arisen during the period of military service, and (ii) the disease has been caused by condition of employment in military service.

18. It is a matter of fact that the disease was suffered by the petitioner during the period of military service and that the disease has been caused due to the stress and strain of military service which have influenced the course of disease as has been observed by the Release Medical Board. This finding has not been negatived even by the Appellate Authority (as the detailed order has not been placed on record, the inference therefore, has been drawn). It is nowhere stated or averred that the disease, which was suffered by the petitioner, could not be detected on medical examination prior to acceptance of the petitioner for service.

It is provided by way of corrigendum noticed above that in case where it is established that the conditions of military service did not contribute to onset or adversely affect the course of disease only then the entitlement for casualty pensionary awards shall be declined. Admittedly, no such finding has been returned by any one even by the Appellate Medical Authority. However, it can be inferred that the stress and strain of military service definitely influenced the subsequent course of the disease and, therefore, has to be accepted as attributable to or aggravated by military service.

19. It may also be noticed that the competent medical authority is stated to have been defined under rule 17 of the Entitlement Rules, 1982 whereas the corrigendum/amendment is dated June 21, 1996, copy of which has been appended as Annexure R2 but for what reasons the detailed order passed by the Appellate Medical Authority/Medical Adviser has not been disclosed are best known to the respondents and even the date of the order passed by the Medical Adviser has not been disclosed. Thus, it seems that the respondents were themselves doubtful vis-a-vis the Medical Adviser being the competent medical authority and that the details of the order perhaps are not convincing.

20. In view of the above discussion, I am of the considered opinion that the petitioner is entitled to disability pension/lumpsum grant, in accordance with the provisions of law as the disability suffered by the petitioner is attributable to or aggravated by military service as the two tests provided under Rule 14 of the Entitlement Rules, 1982 copy of which has been annexed as Annexure R1 have been duly fulfilled by the petitioner.

21. Accordingly, the petition is allowed and the impugned orders Annexures P6 and P8 are quashed. The respondents are directed to grant disability pension/lumpsum grant to the petitioner as per the provisions of law. This exercise be carried out by the respondents within a period, of three months from the date of receipt of certified copy of this judgment. No costs.

22. Petition allowed.