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(2000) 01 DEL CK 0043

In the Delhi High Court

Case No : CW. No. 5361 of 1997

Jagbir Singh (Ex. Sep.) — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

Citation : (2000) 2 AD 176 : (2000) 52 DRJ 557

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. S.M. Hooda, for the Appellant; Ms. Jyoti Singh, for the Respondent

Judgement

N.G. Nandi, J.—In this writ petition under Article 226 of the Constitution of India, the petitioner has been praying for writ of certiorari for quashing the impugned order dated 1.3.1993 and for direction in the nature of mandamus requiring the respondents to pay 60% medical disability pension w.e.f. 23.7.1992.

2. It is the say of the petitioner that the petitioner was enrolled in the regular Army as combatant soldier after a complete medical check up on 11.12.1985 prescribed under the military rules; that the petitioner did not have any disease at the time of his enrolment/entry into military service; that the petitioner always performed his assigned duty to the satisfaction of his superiors; that the petitioner developed eye problem because of strenuous duties of artillery in the Army and he reported the matter to Army Medical Authority in the year 1990; that the Army Medical Authority administered treatment and the petitioner was placed into low medical category "EEE"; that when the disease could not be cured, a proper medical board was constituted which assessed medical disability element at 60% and also recommended invalidating out of military service; that the Commanding Officer could not provide any alternate job suitable to the low medical category and sanctioned 60% medical disability pension of the petitioner and forwarded the claim to respondent No. 3 for disbursement; that respondent No. 3 is an Accounts Officer with the responsibility of disbursing the amount of

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military pension claim by sanctioning the P.P.O.; that respondent no.3 instead of disbursing the amount of 60% disability pension claim which was duly sanctioned by the competent authority, illegally and without jurisdiction, rejected the case of the petitioner vide letter dated 1.3.1993. Copy of which was never sent to the petitioner and respondent No. 2 informed the petitioner vide letter dated 20.9.1997; that the rejection letter dated 1.3.1993 issued by respondent No. 3 is illegal and without jurisdiction: that once the medical board has assessed the percentage of disability and the claim has been duly sanctioned by the competent authority, then it is not open to respondent No. 3 to ignore the same.

3. The respondents vide counter-affidavit contends that the petitioner was enrolled in the Regiment of Artillery on 11th December, 1985; that he was invalidated out of service w.e.f. 22nd July, 1992 due to "BILATERAL MACULOPATHY (369)" under Army Rule 13(3) Item III (iii) (of Army Rule, 1954); that the duly constituted Invalidating Medical Board arranged on him at 159 General Hospital, Firozepur Cantt on 25th June, 1992, to assess the cause, nature and degree of disablement and viewed the disability as neither attributable to nor aggravated by the military service as "IDIOPATHIC DISORDER" and not related to military service. However, the ibid Medical Board assessed the degree of disablement at 40 per cent for a duration of two years. It is further contended that though the petitioner was found fit for Army Service in primary medical examination by Recruiting Medical Officer at the time of enrolment in Army, it cannot be presumed that the individual was free from all diseases, as certain diseases like Generalised Seizures and Idiopathic disorder, cannot be detected being quiescent stage at the time of enrolment as the primary medical examination does not involve various medical examination by qualified specialists; that the duly constituted invalidating Medical Board assessed petitioner''s degree of disablement at 40% for two years and not 60% as stated in the petition. Since the individual was invalidated out from service in medical category "EEE". Commanding Officer cannot provide any alternative job in military service as per existing orders on the subject. The disability pension claim of the petitioner was rejected on the plea that the disability from which the petitioner suffered and on which the claim was based, was viewed as neither attributable to nor aggravated by military service by Chief Controller of defense Accounts (Pensions). Allahabad vide letter dated 1.3.1993.

4. It is submitted by Mr. S.M. Hooda, learned counsel for the petitioner that when the petitioner was enrolled in military service, he did not suffer from any ailment; that there is no note made suggesting that the petitioner suffered any ailment when he was enrolled in Army service. It is further contended that respondent no.3 has no authority to reject the pension claim and that disability assessed by the invalidating medical board can be reviewed/altered at a subsequent stage only by a duly constituted review medical board.

5. It is submitted by Ms. Jyoti Singh, learned counsel for the respondents that the duly constituted Invalidating Medical Board which assessed the cause, nature

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and degree of disablement has viewed that it is neither attributable to nor aggravated by military service as "IDIOPATHIC DISORDER" is not related to military service and that the disability suffered by the petitioner is not attributable to or aggravated by military service and Therefore, the petitioner would not be entitled to medical disability pension.

6. It is not in dispute that when the petitioner was enrolled in the Regiment of Artillery on 11th December, 1985 there was no note made regarding the petitioner suffering from any eye ailment/disorder; that the petitioner was admittedly medically invalidated out from military service w.e.f. 22nd July, 1992. This would suggest that the petitioner served the Army for more that six years and seven months and that he was invalidated out due to "BILATERAL MACULOPATHY (369)" and was placed in low medical category "EEE".

7. In the case of Ex. Sapper Mohinder Singh Vs. Union of India, the Supreme Court observed "In view of all the relevant circumstances of the case, we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board, which had examined the appellant, should be respected until a fresh Medical Board examined the appellant again and came to a different conclusion." In the instant case, admittedly there is no review Medical Board constituted much less review Medical Board examining the petitioner and re-assessing for medical disability element by reaching a different conclusion.

8. Regulation 173 of the Pension Regulations of the Army, 1961 reads as under:-

"173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent at over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II."

Para 7(b) of the Appendix-II provides as under:-

"7(b) A disease which has led to an individual''s discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual''s acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

9. In the case of Deepak Kumar Singh Vs. Union of India, the Division Bench of this High Court held that the disease which led to the petitioner''s discharge will be deemed to have arisen during Air Force service and the petitioner neither hospitalised or treated for the said disease, the Chief Controller of defense Accounts (Pensions). Allahabad, in the absence of any other medical opinion, could not have ruled out or ignored the opinion of the Medical Board upon whose opinion the petitioner was invalidated out assessing disability at 40% for two

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years and the decision of the respondents not to grant disability pension to the petitioner being arbitrary, unsustainable and liable to be set aside.

10. According to the respondents, the medical disability element assessed by the Medical Board is 40%. There is no reason not to accept that the medical disability element assessed is 40% and not at 60% since there is no material to suggest that the invalidating Medical Board assessed 60% medical disability.

In view of the above, the decision not to grant disability pension to the petitioner assessed by the invalidating medical board recommending/assessing 40% medical disability for two years in absence of review Medical Board examining the petitioner and reaching a different conclusion cannot be sustained in law in view of the principle enunciated in the case of Ex. Sapper Mohinder Singh Vs. Union of India (Supra) and in the case of Deepak Kumar Singh Vs. Union of India & Others (supra).

11. In the result, the writ petition is granted. The order dated 1.3.1993 passed by respondent No. 3 is quashed. The respondents are directed to sanction/grant medical disability pension to the petitioner at 40% for two years assessed by the Invalidated Medical Board. The same will continue to be paid till the disability is varied/altered or re-assessed by a property constituted fresh/review Medical Board. The respondents shall work out the arrears and the same be paid within three months to the petitioner failing which the amount payable as above shall carry 12% interest w.e.f. 23rd July, 1993 till the date of payment. The costs of the petitioner is quantified at Rs. 5000/- which shall be borne by the respondents.

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