
(2013) 12 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (C) 5749 of 2011 and CM No. 12141 of 2013

J.S. Punia

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 6 ILR Delhi 4780

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; Ankur Chhibber, for the Respondent

Judgement

Gita Mittal, J.—The instant writ petition has been filed by the petitioner impugning the order dated 7th July, 2011 passed by the Armed

Forces Tribunal in OA No. 737/2010 rejecting the petitioner's prayer for direction to the respondents to pay invalid pension to him with effect

from the date of his release from service along with arrears and 12% interest thereon. The petitioner had also prayed that the respondents be

directed to add the period of leave pending retirement ("LPR") for 108 days with 12% interest thereon. The present case has a chequered history

and is preceded by several litigations which would not only guide the present adjudication but bind the same.

2. The facts of the case as well as judicial history are briefly noted hereafter to the extent that the same is relevant for the purpose of the present case.

3. The petitioner was granted permanent commission in the Indian Air Force on the 15th of June, 1980 after having been found physically and

medically fit. The petitioner has placed several grievances against his commanding officer and claims that he had made a written complaint in this regard on the 29th of October, 1990 to the Company Commander. It was claimed by the petitioner that his Commanding Officer initiated

AFMSF-10, that is referring the petitioner as a psychiatric case and flew him with armed guards to Military Hospital, Ahmedabad on the 5th of

November, 1990. He was subsequently transferred to the psychiatric ward of the Command Hospital, Pune. The petitioner submits that he was

unnecessarily heavily drugged. His condition was diagnosed as a case of ""Maniac Depressives Psychosis"" and he was placed in the low medical

category A-4, G-5(T). As a result, on the 2nd of March, 1991, the petitioner was declared unfit for flying.

Thereafter on 22nd April, 1991, the petitioner was posted to the Air Force Station Rajokri as an Operations Officer and was assigned several

important duties.

4. In the Review Medical Board held at Command Hospital (AF) Bangalore on the 27th of November, 1991, the petitioner's temporary medical

category was extended by 24 weeks. On 12th October, 1994, the respondents held the last Review Medical Board of the petitioner in which he

was placed in permanent low medical category in A-4(P), G-2(P) and declared permanently unfit for flying. The percentage of disability was

assessed at 20%.

5. On the 12th of March, 1992, the petitioner was relieved from all appointments by his Commanding Officer and on the 14th of March, 1992, he

was again sent with armed escorts to Army Hospital, Delhi Cantt where, again without informed consent, the petitioner was forcibly put on a very

strong drug along with electroconvulsive therapy (ECT). The petitioner apprehended irreversible damage and even fatal consequences of the

treatment. The wife protested about the same and finally approached this court by way of CWP No. 2718/1992. This court restrained the

respondents from administering any medication against the wishes of the petitioner and his wife and also directed the respondent to get the

petitioner examined at AIIMS. The doctors of AIIMS found that there is lack of evidence of any definite psychiatric abnormality in the petitioner.

6. At this stage, the petitioner was served with a charge-sheet informing him

that he was charged with the offence of having been absent without leave and also the direction to try him for the same by General Court Martial. The petitioner was asked to get admitted in the psychiatric ward for certification of his fitness to stand trial in the General Court Martial. The petitioner was in low medical category and by procedure had to be admitted in the psychiatric ward every six months for review. There was no chance to get back to flying or to ever be fit to stand for trial in General Court Martial.

7. Under great mental pressure, the petitioner submitted an application on the 24th of November, 1992 for release from service on medical grounds. This application was recommended by the Commanding Officer but turned down by the Air Headquarters.

8. The petitioner assailed the initiation of the General Court Martial by way of WP(Crl) No. 209/1993 before this court. Though the trial was initially stayed by an order passed on the 2nd of April, 1993 but the writ petition was finally dismissed by an order passed on the 15th of February, 1995. Aggrieved thereby, the petitioner filed a SLP (Criminal) No. 881/1995 before the Supreme Court of India.

9. The petitioner has also placed before us a copy of the Medical Board Proceedings-Categorisation/Sick Leave-All Ranks held on the 12th of October, 1994. The relevant portion thereof deserves to be extracted and reads as follows:-

13. (a) Principal disabilities Affective Disorder (MDP Cyclic)

14. xxx

15. Give concisely the essential facts of the history of the disability

Note:-Boards subsequent to the first should record here the progress of the case since last appearance.

This 36 1/2 yrs old F(P) officer is an old case of Affective disorder (MDP Cyclic), onset in Nov 90 at Jamnagar. He was admitted and treated

with antipsychotic drugs at CH(SC) Pune. Ever since he is under periodic review in low medical category. In Nov 91 he had the depressive

episode and was treated with anti-depressant therapy as an OPD case at CH AF Bangalore. In Mar 92 he had a relapse of the hypomanic

episode and was admitted to AHDC on 14 Mar 92. He refused treatment and became AWOL from AHDC w.e.f. 17 Mar 92. During this period

he represented in Delhi High Court against the treatment or hospitalisation against his wishes and the court upheld his appeal and was referred to

AIIMS New Delhi for psychiatric evaluation where he was reported to have suffered from MDP (Bipolar) but was in remission at the time of

examination. However he was not evaluated in service till 14 July 94 when his medical board was held at this centre and was placed in med

category A4, G4 (T-12). He has now reported here for review and recategorisation

OPINION OF THE BOARD

9. Any specific restriction regarding employment Perm unfit A1; A2; A3 duties. Fit for full ground duties but slightly below the GI standard in all

parts of the world.

10. & 11. xxx

12. Next Board due on Annually at AFCME/IAM with fresh executive report and AFMSF-10.

13. Instructions given to the individual by the President of Board.

a) To report to unfit MO/SMO.

b) Review by psychiatrist locally after 6 months.

Last date of Appeal to reach Air HQ (RKP) through President. AF CME by 27 Oct 94.

10. The respondents placed the details of the petitioner's illness as well as its impact on him before the Supreme Court. On a consideration of the

same, by an order dated 29th September, 1995, the Supreme Court made observations and passed the following directions:-

In view of the stand of the respondents themselves in respect of the mental condition of the Appellant, we fail to appreciate as to what useful

purpose will be served in pursuing the court martial which is pending against the appellant.

The appellant seeks premature retirement because of the aforesaid ailment. We are satisfied that this is a fit case where premature retirement

should be granted to the appellant and all proceedings including court martial should be dropped.

This court in case of Alka Dabas & Ors Vs. Union of India & Ors (writ petition no. 19-21/94) on 5.1.1995 passed an order directing premature

retirement to the petitioner of the writ petition and court martial which was

pending against him was directed to be dropped.

Accordingly, we direct that the appellant be prematurely retired and all proceedings including court martial pending against him be dropped. The appellant shall be entitled to all other benefits in accordance with law.

The appeal is allowed. No costs.

11. It is noteworthy that the maniac depressive psychosis from which the petitioner suffered had rendered the petitioner unfit only for flying. It is an

admitted position that the petitioner was posted as an Operations Officer at the Air Force Station Rajokri with effect from the 22nd of April, 1991;

he was assigned many duties which included the duties of Counter Intelligence Officer (CIO), Station Adjutant as full time; sent for umpiring duties

for EX. Trishul from 16th to 23rd October, 1991 to Suratgarh during a joint Army Air Force Exercise.

12. In view of the above, the respondents have issued a order dated 27th November, 1995 for premature retirement of the petitioner. The

petitioner unconditionally accepted the same. Eight years thereafter, the petitioner filed WP(C) No. 3490/2003 complaining that he was not

released retiral benefits including the gratuity, encashment of leave, service pension and disability pension etc. It is noteworthy that the writ petition

was filed after serving a legal notice.

13. Before the court hearing arguments on the 8th of January, 2008, only a claim for disability pension was strongly pressed on the ground that

though the petitioner was discharged from service on his instance, but the same was on account of disability and therefore, he was entitled to

disability pension. It was urged on behalf of the petitioner that he was medically fit at the time of his commission and that the disease was

attributable and aggravated during service. On the 8th of January, 2008, the court noted that no such case was set up either in the writ petition or

in the legal notice served by the petitioner. The petitioner was therefore, permitted by this court to withdraw the writ petition with liberty to file a

substantive petition raising the aforesaid issues.

14. Pursuant to the aforesaid liberty, the petitioner filed second writ petition being WP(C) No. 604/2008. This writ petition was dismissed by an

order dated 23rd September, 2008. The claim of the petitioner; the observations as well as the findings of the court have material bearing on the

present petition. It is noteworthy that the petitioner had pressed a claim only for award of disability pension in this writ petition. The relevant extract

of the order reads as follows:-

3. The petitioner was still aggrieved as he wanted the pension/retiral benefits. This resulted in certain proceedings but it is not in dispute that all

retiral/pensionary benefits have been paid to the petitioner except the disability pension. It is this claim for disability pension which forms the subject

matter of the present petition.

4. The disability pension would be admissible to the petitioner if he was invalidated out of the service on account of medical reasons attributable to

or aggravated by military service. The Medical Board, in the case of the petitioner, has opined against the petitioner in respect of

attributability/aggravation aspect. The remedy for the same would thus had been an Appeal Medical Board as this Court cannot sit in appeal and

re-examine the proceedings of the Medical Board. It is for the medical experts to determine the attributability/aggravation of the disease on

account of military service.

5. The aforesaid course of action is, however, not available in the present case as considerable time has lapsed since the earlier Medical Bard was

held and it is not possible after 13 years to now direct an Appeal Medical Board to determine the validity of the findings of the Medical Board held

earlier in the year 1995. The petitioner himself is to blame for this position as from 1995 till 2002/2003 the petitioner was silent for a period of

more than seven years. The petitioner thereafter filed a writ petition No. 3490/2003 which was also withdrawn after five years to file a fresh

petition which has now been filed. The grant of pension is undoubtedly a continuing cause of action but that can be granted in case the entitlement is

not in dispute. In the present case the entitlement itself is in dispute.

6. xxx

7. The Medical Board, in the present case, has opined against the petitioner specifically in this behalf and holding an Appeal Medical Board after

so many years would serve no purpose to ascertain the cause of the disease 13 years ago. The petitioner cannot thus be granted any relief in

exercise of jurisdiction under Article 226 of the Constitution of India.

(Underlining by us)

15. This order was assailed by the petitioner by way of SLP (Civil) No. 30154/2008 which came to be dismissed by the Supreme Court granting

him liberty to file a review petition before this court. The petitioner thereafter filed Review Petition No. 56/2009 in WP(C) No. 604/2008 which

was dismissed by this court on the 6th of February, 2009. The petitioner challenged this order as well by way of SLP(Civil) No. 10099-

10100/2009 which was dismissed by the Supreme Court.

16. The matter deserved a closure after the above litigation. It had been categorically held that the petitioner had received all his retiral benefits and

was disentitled to any disability pension. The order dated 23rd September, 2008 had categorically observed that it was not possible thirteen years

after the petitioner's voluntary retirement to direct an appeal medical board to determine the validity of the findings of the Board of 1994 and

holding an appeal medical board after so many years would serve no purpose to ascertain the cause of the disease 13 years ago.

17. Despite the above position, the petitioner was advised and has laid a completely new claim, this time for invalid pension by way of O.A. No.

737/2010, fifteen years after he had been retired from service. The same was considered in the light of the applicable rules and rejected by an

order dated 7th July, 2011 passed by the Armed Forces Tribunal.

18. Appearing for the petitioner, Colonel (Retd.) S.R. Kalkal has pressed that the petitioner had served for more than 15 1/2 years and therefore

was entitled to invalid pension which was applicable to all ranks on completion of 10 years of service under Regulation 72 of the Pension

Regulations for the Army, 1961 and Part-I of the Government of India, Ministry of Defence letter dated 30th October, 1987; 3rd February, 1998

and 5th May, 2008 and Circular dated 29th September, 2009.

19. Before the Armed Forces Tribunal, the petitioner had placed reliance on Rule 4 of the Entitlement Rules for Casualty Pensionary Awards 1982

which reads thus:-

Rule 4.

4. Invaliding from serving is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release

Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents

in other services who are placed permanently in a medical category other than "A" and are discharged because no Alternative or Shelter

Appointment can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of

their engagement will be deemed to have been invalidated out of service.

20. It is argued that the petitioner was released from service in a low medial category which has to be treated as invalidated out of service in terms

of the above and therefore, the respondents ought to have granted him invalid pension on their own accord.

21. Our attention has also been drawn to Regulation 197 of the Pension Regulations for the Army 1961 Part-I which reads as follows:-

Invalid Pensions/Gratuity when admissible.

197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter to-

(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;

(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated service, but the disability is

assessed at less than 20%.

(c) a Low Medical Category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical

category.

(Emphasis supplied)

22. It is important to note that the petitioner was not invalidated out of service because of exigency of service or the low medical category. On the

contrary, he had sought voluntary retirement from service before the Supreme Court. This request was granted to him.

23. The Armed Forces Tribunal has concluded that for entitlement to invalid pension, the rule position required is that the individual must have been

invalidated out of service as he could not be detained in service and such person could not be penalized because of his having been rendered

invalid. It is in this eventuality, so far as a person who had put in 10 years of service before his invalidation is concerned, he would be entitled to

such pension.

24. The petitioner was discharged from service based on his voluntary requirement, disentitling him to grant of invalid pension. As noted above,

though the petitioner was in low medical category and had been opined to be unfit for flying but the respondents had been deploying his services

for ground duties and he was assigned many important duties.

25. In this regard, we may also refer to the opinion of the recategorization medical board of the petitioner dated 12th October, 1994 which had

specifically observed that though the petitioner was in low medical category however, he was fit for full ground duties but slightly below the GI

standard in all parts of the world. The petitioner was required to report for a review of his medical condition after six months. This was never done

by the petitioner.

26. So far as reliance on the Government circular dated 29th September, 2009 is concerned, the same relates to implementation of the

Government decision on the recommendations of the 6th Central Pay Commission. In para 3 of the circular, it is specifically stated that the same

would apply to the Armed Forces personnel who are retired/discharged from service on or after 11th January, 2006. The Tribunal has therefore

rightly concluded that the circular has no application to the case of the petitioner who voluntarily retired from service on the 27th of November,

1995.

27. The Tribunal has noted Regulation 397 of the Air Force which clearly stipulates that an individual air force personnel shall not be eligible for

invalid pension on account of disability in case of voluntary discharge and therefore, the claim of the petitioner before the Armed Forces Tribunal

as well as before this court is completely misconceived.

28. Colonel (Retd.) S.R. Kalkal, learned counsel for the petitioner has pressed yet another point in support of his writ petition. It is contended that

at the time of the petitioner's release from the Air Force, it was incumbent to conduct a Release Medical Board or an Invaliding Medical Board. In

this regard reliance is placed on para 1.1.10 (Release Medical Boards) and 1.1.11 (Invaliding Medical Boards) of the Manual of Medical

Examinations and Medical Boards-IAP 4303 (4th Edition: September, 2010) issued by the respondents. The above paras of this Manual read as

follows:-

1.1.10 Release Medical Boards. Release medical board are conducted to assess the fitness of the individual at the time of his/her release from

service so as to assess the effects of service career on his/her health, if any, and to decide fitness for commutation of pension. In cases of prior

disability the attributability/aggravation factors, percentage of disability and frequency of review and fitness for civil employment after release from

service are also decided in a Release Medical Board.

1.1.11. Invaliding Medical Boards. These are held when, due to disease or disability, an individual can no longer perform his/her service duties.

Such individuals are invalided out of service.

29. The petitioner has remembered the fact that he was permitted to voluntary retire without a Medical Board or Invaliding Medical Board being

conducted, only in the present writ petition which has been filed 15 years after he was voluntary retired on the 27th of November, 1995. On this

issue, we have extracted above the order dated 23rd September, 2008 in WP(C) No. 604/2008 wherein this court has concluded in para 8 that

the Medical Board after so many years would serve no purpose to ascertain the cause of the disease 13 years ago. A Medical Board conducted in

2013 would not facilitate determination of the petitioner's medical condition on 27th November, 1995 when he voluntary retired. It is therefore,

too late in the day for the petitioner to seek his medical evaluation by a Medical Board or a Invaliding Medical Board.

30. Mr. Ankur Chhibber, learned counsel for the respondents has submitted that the petitioner's claim is liable to be rejected in view of the

pronouncement of the Supreme Court reported at P.K. Kapur Vs. Union of India (UOI) and Others, . In this case, the court has rejected the

claim for invalid pension on similar grounds. The contention of the appellant as well as finding of the court reads as follows:-

8. It is lastly urged by the appellant that he has not been paid war injury pension at the current rate. In this connection, he submitted that under the

rules for casualty pensioners invalidation from service is a necessary condition for the grant of disability pension. If a person is released from

service in a lower medical category then what he was at the time of recruitment, he would be treated as invalided from service. Appellant

contended that he was released in a lower medical category from service on 30.11.89 then what he was at the time of recruitment and, therefore,

he should be treated as invalided from service with effect from the date of release for the purpose of grant of disability pension.

9. We do not find any merit in the third submission. Appellant retired on 30.11.89 on superannuation. He was never invalided. He now claims to

be invalided out of service. Having stood retired from service after completing full tenure of service, appellant cannot now claim that he was

invalided out of service. The concept of invalidment applies to cases in which the tenure of service is cut short due to invalidment on account of war

injury or disability. The concept of invalidment does not apply to cases where an officer completes his tenure of service and retires on attaining the

age of superannuation. Therefore, there is no merit in the third contention raised by the appellant.

31. Placing reliance on the pronouncement in P.K. Kapur (Supra), the Supreme Court also rejected a similar claim by accepting a challenge made

by the official respondents to grant of relief of invalid pension to Naik Narikar by the order dated 24th May, 2012 passed in Civil Appeal No(s).

8433-8434/2009. In the present case, the petitioner's tenure has not been cut short due to invalidment on account of injury or disability. Though

placed in a low medical category, he was gainfully retained in service. He opted to leave the force on voluntary retirement, which request stood

accepted. The principles laid down in P.K. Kapur (Supra) squarely apply to the present case.

32. This writ petition could have been summarily dismissed on a short legal issue. The prayer made by way of the present writ petition was

available to him when he filed his first writ petition being WP(C) No. 3490/2003 but was not sought. The petitioner did not make any claim for

invaliding pension even in the second writ petition bearing WP(C) No. 604/2008 filed by him. The petitioner having failed to seek a relief which

was available to him when he initiated litigation, would be deemed to have abandoned the claim and stood precluded from raising the claim by way

of the application before the Armed Forces Tribunal as well as from pressing the same by way of the present writ petition. However, given the long

history of the litigation, we have dealt with the petitioner's claim on merits as well so as to bring the entire controversy to rest. For all these forgoing

reasons, we find no merit in this writ petition and application which are hereby dismissed.