
(1997) 12 DEL CK 0066
In the Delhi High Court
Case No : CWP No.2878/97

J.W.O.L Nizamuddin

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 12 DEL CK 0066

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Mr.R.N.Sharma, for the Appellant; Ms.Alpana Poddar, for the Respondent

Judgement

Usha Mehra, J.—Petitioner was recruited in the Indian Army on 3rd December, 1968. At the time of his enrolment in the Army he was considered medically fit and fixed in medical category "AYE". Petitioner successfully completed his training and passed out from the Training Centre on 4th March, 1970. He was thereafter posted to No.4 Wing Air Force, Agra. In December, 1972 he was reclassified as Leading Air Crafts-man and on 6th May, 1976 he was promoted to the rank of Corporal. In 1983 he was promoted to the rank of Sergeant. On 19th January, 1994 he was posted at Mysore on promotion to the rank of Junior Warrant Officer. It is at this place that he developed hearing loss because of the stress and strain of service. Medical checkup was carried out by medical authorities of the Air Force. Wherein it was opined that he was suffering from "Sensori Neural Hearing Loss (bilateral)". Accordingly, the petitioner was down graded in medical category to "CEE" (permanent) by Air force Command Hospital, Bangalore.

2. On 15th April, 1996 he applied for extension of service for which purpose he was referred to Air Force Command Hospital. Bangalore for opinion of ENT Specialist. The senior ENT Specialist Group Captain S.K.Nanda after examining the petitioner vide his report dated 4th May, 1996 recommended the petitioner

as fit for further extension of service in low medical category "CEE (Permanently)" in his trade. On 8th May, 1996 the Senior Medical Officer Flt. Lt. C.M.A. Belliappa after re-examining the petitioner recommended his case for grant of extension of service as the petitioner was found fit. It is his case that on 23rd May, 1996 when Senior Medical Officer Flt. Lt. Bala Subramanyam returned from leave he deleted the re- marks given by the officiating SMO. Instead of the remarks fit given by the officiating SMO, Mr.Balasubramanyam changed these remarks into unfit for extension of service. This he did with malafide intention. Flt.Lt. Balasu- baramanyam never examined the petitioner personally for his disability nor he was an ENT Specialist and in any case had no power to over-rule and supersede the report given by a Senior Adviser and Professor of Department of ENT. In view of the remarks given by Balasubramanyam, the respondent No.3 vide his order dated 18th July, 1996 declined to grant extension of service to the petitioner rather ordered his discharge effective from 31st December,1997. Being aggrieved, the petitioner on 8th August, 1996 made representation to respondent No.4. On 19th February, 1997 Unit Adjutant acting on behalf of respondent No.4. On 19th February, 1997 Unit Adjutant acting on behalf of respondent No.4 informed the petitioner that since he was in Category "CEE" (permanent) and his medical category being not attributable to service hence was not eligible for grant of extension of service. That his discharge order passed stood good. Aggrieved by this order he has preferred this writ petition.

3. Mr. R.N.Sharma, counsel for the petitioner contended that on-set of disease was admitted during the course of employment. Therefore, it cannot be said that the petitioner did not suffer from this disability on account of his trade. In fact his hearing was impaired and the loss of hearing was due to his trade. This fact has been admitted even by the respondent in its counter affidavit in para 6 which reads as under "That while carrying out his routine trade duties he developed "SENSORI NEURAL HEARING LOSS" and was placed in Low Medical Category "CEE"(P)". This is a clear admission on the part of respondent that the disability was caused to the petitioner on account of his routine trade duties. When he joined the Army no note was append by the Medical Board indicating that he was suffering from hearing loss. On the contrary the Medical Board categorically opined his medical category as "AYE" meaning thereby that he was medically perfect. He joined service on 3rd December, 1968. He completed his training in March, 1970 and the hearing was effected only in August, 1994 i.e almost after 24 years after his joining service. It cannot be said that this is not attributable to service. Petitioner also placed reliance on the Medical Board proceedings of the year 1994 and 1997, to say that Medical Board of 1994 admitted that the disability was contacted by the petitioner while in service. It has nowhere been explained by the respondent as to how it was not attributable to service. As per policy letter issued by the Head Quarter dated 6th November, 1995 para 4(C)(V) the petitioner would be entitled to extension in service if his disability was attributed to service. Since the Medical Board opined that disability was in the course of employment and aggravated due to trade, Therefore, it cannot be said

it was attributed due to routine trade duties.

4. Before dealing with the relevant contentions raised by Mr.R.N.Sharma, counsel for the petitioner and Mr. Alpna Poddar, counsel for the respondents at the bar, Mr. Sharma wants this Court to place reliance on the provisions of Regulation 173 of Pension Regulations and the rules governing the grant of extension in service issued by the respondent. Provisions of Regulation 173 of the Pension Regulations of the Army and Rule 7(b) of Appendix II to Pension Regulations which are reproduced as under.

"Regulation 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 to 20 per cent or over."

"Rule 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 the 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."

5. Regulation 173 provides that disability which leads to the discharge of a Army Officer ordinarily will be deemed to have arisen in service. If no note of this disability was made at the time of his entry in the military service or unless the Medical Board expressed that disease which lead to his discharge was such as could not have been detected by Medical Board at the time of his entering service. So far Regulation 173 and Rule 7(b) are concerned, I am in agreement with the contention of Mrs. Poddar that in the facts of this case the Regulation 173 and Rule 7(b) is of no help. Petitioner is not seeking disability pension. Therefore, Regulation 173 is of no help to the petitioner. Counsel for respondent has fairly conceded that the petitioner is entitled to disability pension because the Medical Board opined that his disability aggravated on account of trade duties.

6. The question for consideration now is whether the petitioner is entitled to extension of his engagement? Whether his disability can be attributed to service particularly when no reasons have been assigned by the Medical Board as to why this disability cannot be attributed to his service? In order to answer this question reference can be made to the letter dated 6th November, 1995 issued by the respondent. It deals with the extension of engagement of an Airman/ NCs(E). It says that initial term of engagement for an Airman is 20 years and for NCs(E) it is 15 years. There being no other type of Engagement prevailing at present, this letter is being issued to bring the subject under one policy letter in its entirety. This letter further says that for an Airman on completion of his initial term, extension of Engagement for further period can be granted if the Airman is consistent in his overall performance and subject to the following principles namely:-

- a) Service requirement
- b) Willingness for Extension of engagement
- c) Medical fitness
- d) Passing of Promotion Examination
- e) Conduct records
- f) ACR/Assessments for last five years
- g) Suitability for Extension
- h) Certificate of Undertaking (CoU)

7. So far as Service requirement, Willingness for Extension of engagement, passing of promotion examination, conduct record ACR and suitability are concerned, we are not concerned with that at the moment. The only ground on which respondents have rejected the extension of engagement of the petitioner is that he is not medically fit and that his disability is not attributable to service. Counsel for respondent contended that the opinion of Group Captain S.K.Nanda, Senior Advisor of ENT was only by way of recommendation. It was not a Medical Board's opinion. Group Captain S.K.Nanda was not a competent authority for the grant of extension of regular engagement. The higher administrative authority was competent to over-rule the recommendation of Group Capt. S.K.Nanda and that authority has in fact over-ruled this recommendation. To strengthen her arguments, she placed reliance on para 4(C)(V) of the Head Quarter letter dated 6th November, 1995 and on Pension Regulation for the Air Force (Part-I) 1961, Para 7(C), which are reproduced as under:

"Para 4(c)(V)

Airmen placed in Medical Category CEE (P) will not be granted Extension of Engagement. However, cases of airmen in Medical Category CEE(P) for reasons attributable to service will be considered on merit.

Para 7(c): If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstance of duty in military service.

8. Both these provisions deal with the entitlement of extension of an officer provided he establishes that the condition of service contributed to the onset of the disease. He has to establish casual connection between disability and the Air Force service for attributability. She further contended that Medical Board has not opined that disability was attributable to service. In the absence of medical opinion in his favor petitioner is not entitled to the relief. To support her contention she placed reliance on the decision of Supreme Court in the case of Union of India Vs. Baljit Singh, Civil Appeal No.13272/96 (arising out of SLP(C) No.9366/96) decided on 11th October, 1996. It has been held by the Apex Court

that disability beside being established having arisen in military service, the petitioner must affirmatively establish that this was due to military service. Unless attributability is established he cannot get the extension or the pension.

9. So far as the proposition of law is concerned, there cannot be any quarrel with the same. Looking at the facts of this case and the disability incurred by the petitioner, prima facie it cannot be said that it was not attributable to service. From the facts which have come on record it is affirmatively established that the onset of the disease was during his service. He suffered from the hearing loss because of his trade service. This fact find mention in the Medical Board's report held in May, 1997. Medical Board's proceedings show that the medical experts opined that his disability aggravated due to exclusive exposure to high sounds (trade duties). As against the column of "Is it directly connected with service" except saying "No" the Medical Board has not given any reason why and how it was not having direct link with his trade duties. In column No.2 of the form where opinion of the Medical Board is to be expressed, it has been mentioned that the Board should state full reasons incurred to each disability on which its opinion is based. But unfortunately with regard to the question of attributability except saying "No" no reasons has been given to arrive at that opinion. Admittedly, when the petitioner joined Army service in 1968 he was not suffering from any medical disability. That is why he was categorised in medical category "AYE". It was only after 24 years of his service when he was posted at Mysore in 1994 for the first time he found hearing loss. Petitioner as per his job requirement had to wear headgear to perform his duties. That is how he was exposed to high sounds. Therefore, it cannot be said that the hearing loss after 24 years was not due to his trade duties. The petitioner while performing the duties of TEL/RT/OPR by trade had to put on headgear sets and was thus exposed to high sounds and noise pollution. In this view of the matter, it cannot be said that his disability did not occur because of his service. In fact his job contributed to his disability. His duties suggest that he incurred this disability because of his constant use of the head sets and exposure to high sounds and noise pollution. Moreover, in similar circumstances in the case of Junior Warrant Officer R.C.Pant who was placed in category "CEE" (permanently) due to hearing loss was granted extension in December, 1996. His hearing loss was treated attributable to service. Mr. Pant was similarly situated as the petitioner. Therefore, the respondent to my mind, discriminated with the petitioner as compared to JWO R.C.Pant service No.602229.

10. That para 423(c) of the Pension Regulations lays down the manner in which the question of attributability of a disease has to be determined. It reads as under:

423(c)- The cause of disability or death resulting from a disease is attributable to service when it is established that the disease arose during service and was influenced by service. Cases in which it is established that service conditions did not determine or contribute to the on-set of the disease but influenced the

subsequent course of the disease it will be regarded as aggravated by the service.

11. Reading of para 423(c) clearly show that on petitioner's establishing that his disease arose in service or during service and was influenced by service then it would amount to attributable to service. As already pointed out above the Medical Board itself opined that the disease arose in service i.e. after 24 years of his joining service. Therefore, the first condition of para 423(c) stands satisfied. So far as the question whether the disability was influenced by the service, for that I have already discussed above that the petitioner's job was such, he had to wear headgear sets and was exposed to high sounds and noise pollution, Therefore it can safely be said that this disability could have been caused because of his trade. The job which he was performing had direct nexus with the condition of his ears. Since for the last so many years he was exposed to high sounds and had to wear headgear sets and noise pollution, it cannot be said that there was no direct link with his job and the disability. His service influenced the disease or caused this disability. Therefore, attributable to service.

12. Having said that hearing loss or the disability suffered by the petitioner arose in service and was influenced by service, Therefore, attributable to service. Moreover, in similarly circumstances in the case of JWO R.C.Pant the respondents gave extension of engagement in service of Mr.Pant. I see no reason why directions cannot be given to the respondent to re-consider the case of the petitioner for extension of engagement in service on merits. This be done within a week from today as the petitioner is otherwise retiring on 31st December, 1997. Order accordingly.