

(1997) 05 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : O. Writ Petition No. 7 of 1996

Karnail Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-05-1997

Acts Referred:

Pension Regulations for Army, 1961 — Rule 173A, 7

Citation : (1998) KashLJ 4

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : Anchal Sethi, A.Gandotra, Advocates appearing for the Parties

Judgement

1. Petitioner is clamouring for grant of disability pension but the respondents are denying it to him on the plea that he had sought voluntary

discharge from the army and that his disability was not attributable or aggravated by the military service.

2. Petitioner was enrolled in the army on 28/7/1971. He appears to have developed some heart ailment and was first admitted to Military Hospital

in December, 1974. He was then subjected to examination by the Medical Board and was placed in the low medical category ""BEE"". He was

eventually discharged on 31.1.1992. He seems to have thereafter pursued his case for grant of disability pension but he was informed by

communication dated 25.10.1992 that he was not entitled to it. He thereafter made representations and at one stage his case was recommended

and forwarded to CCDA (Pensions) vide communication dated 25.9.1992. He was again asked to seek a fresh medical opinion and was

ultimately intimated by letter dated 30.9.1994 that he was not liable to be granted disability pension as his disease was not attributable to military

service.

3. Petitioner has questioned the action of respondents on the plea that the order rejecting his request for grant of disability pension was not a

speaking order and it even did not indicate the disease suffered by him. It is also submitted that since he had contracted the disease during the

military service and was even being treated in the military hospital even after his discharge, therefore, the respondents could not turn round and

deny him the disability pension on the ground that his ailments was not attributable to the military service. He has derived support from AIR 1997

SC 565, 1996(3) SCT 87, 1996(3) SCT 778, 1996(3) SCT 441 & 446.

4. In their reply respondents have detailed out the period from 1974 to 1991 during which the petitioner remained hospitalized. They have broadly

supported the rejection of his request for grant of disability pension on the plea that he had sought discharge voluntarily and that his ailment was not

attributed to or aggravated by the military service. In other words, it is sought to be projected that the petitioner was not invalidated out of service

on account of the disability and, therefore, was not entitled to disability pension as Army Rule 173 was attracted to his case.

Army Rule 173 provides as under: ""Unless otherwise specifically provided, disability pension may be granted to an individual who is invalidated

from service on account of disability which is attributable to or aggravated by the military service and is assessed at 20 percent or over.

5. As a result of an amendment made in 1967 one more category was added for entitlement to the disability pension by inserting the following:

Individuals discharged on account of their being permanently low medical category.

6. Rule 173A provides:

Individuals who are placed in low medical category(other than 'E') permanently and who are discharged because of no alternative employment

suitable to their low medical category could be provided, shall be deemed to have been invalidated from service for the purpose the entitlement

rules laid down in Appendix II to these Regulations.

7. The question whether disability is attributable or aggravated by military service has to be decided in accordance with Rule 7(b) of Appendix II.

In Appendix II it has, inter alia, been provided that ""the 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 would not be deemed to have arisen during service.

8. All that remains to be seen in this background is: whether petitioner had sought voluntary discharge and even if it was assumed to be so whether it would disentitle him from disability pension or whether he was invalidated out on account of having been placed permanently in low medical category or whether his ailment was attributable to or aggravated by the military service?

9. A combined reading of Army Rules 173 and 173A leaves no scope for doubt that an individual serving in the army becomes entitled to disability pension if he was invalidated from service on account of disability which was attributed to or aggravated by the military service and was assessed 20 percent or over for being placed permanently in low medical category. Even those who are placed in the low medical category (other than 'E1) permanently and are discharged because no alternative employment suitable to their medical category could be provided in the army, were also required to be deemed to be invalidated from service for their entitlement to the disability pension.

10. Record shows that the petitioner was all along informed that he was disentitled because his ailment was not attributed to military service. It does not come out that the respondents had discharged him at his request and in disregard of his disability and having been placed in low medical category (BEE) by the Medical Board. It is true that according to one of the documents placed on record, petitioner had undertaken not to claim the disability pension. But, that by itself could not deprive him of his right to get it if he was otherwise entitled. Moreover, the plea stands negated by the report of the Medical Board dated 1381991 which specifically indicated that he was ""being released/invalidated out of the service in medical category ""BEE"" for ischemic heart disease"". Besides, the petitioner's case is also covered by Rule 7(b) of Appendix II which provides that a disease which led to an individual's discharge or death would 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.

11. It is not anybody's case that the petitioner was said to be carrying this disease at the time he entered military service or that it was a disease of the kind and type which could not be noticed. Therefore, the only inference that can be drawn in the circumstances is that the petitioner was

physically fit at the time of his enrolment and that he contracted the ailment subsequently. As such in view of the provisions of Appendix 11 of Rule

173 it had to be assumed that the ailment suffered by him was attributable to military service.

12. In the circumstances the petitioner succeeds on both fronts. He was invalidated out of service on account of his being permanently placed in

low medical category (BEE) and secondly, that the ailment suffered by him was surely attributed to military service in the face of provisions of

Appendix II. Any undertaking given by him that he would not ask for the disability pension is of no consequence because no provisions of Rule

173 covers such an eventuality.

13. Resultantly this petition is allowed and the respondents are directed to release the disability pension of the petitioner in accordance with rules

within four months from the date of receipt of this order.