
(2002) 07 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 14805 of 1992

Keshav Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2003) 1 AWC 656

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : G.D. Mukerji, for the Appellant; Shishir Kumar and S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—This writ petition under Article 226 of the Constitution of India filed by the petitioner, who is an ex-army man, was heard by me and was allowed vide order dated 16th July, 2002, for the reasons to be recorded later on. Now here are the reasons for allowing the aforesaid writ petition.

2. The petitioner by means of present writ petition claimed for the following reliefs :

"(a) issue a writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner in service in a sedentary job ;

(b) issue a writ, order or direction in the nature of mandamus directing the respondents to pay disability pension to the petitioner on completion of his tenure of service ;

(c) issue a writ, order or direction in the nature of mandamus directing the respondents to pay the arrears of pay and allowances to the petitioner from the date of his discharge till the date of his completion of service or reinstatement, whichever is earlier ;

(d) issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in favour of the petitioner.

(e) award costs of this petition."

3. The facts as emerged out of the exchange of the pleadings are that the petitioner, who joined the services of Indian Army on 4th January, 1972, after thorough medical examinations and other tests and was posted in the Jat Regiment. The petitioner had suffered a heart attack after about 17 years of army service and was directed to appear before the Medical Board, who placed the petitioner in permanent category C.E.E. Thereafter the petitioner was directed to appear before the Release Medical Board, who assessed the petitioner's disability at 40 per cent and recommended his discharge from service on medical grounds. The certificate to this effect has been annexed as Annexure-1 to the writ petition. The petitioner was thereafter issued a discharge book, in which also it is clearly mentioned that the petitioner has been released from the army service by a Medical Board held at Military Hospital, Mau (Madhya Pradesh) on 11th June, 1990 and further his disability will not interfere with normal/sedentary employment, a copy whereof is annexed as Annexure-2 to the writ petition. Petitioner's further allegations that in the discharge record an entry has been made that the petitioner is discharged on fulfilling the condition of enrolment under the provision of Rule 13 (III) (iii) of the Army Rules ; meaning thereby that the petitioner has not been discharged on the basis of low medical category and thus the action of the respondents disentitles the petitioner to get the pension on the medical ground, which is otherwise available to all other such persons, who are discharged from the army on the recommendation of the Medical Board. This fact has been denied by the respondents in the counter-affidavit. The petitioner filed an amendment application, which was allowed by this Court vide its order dated 14th May, 1992, wherein certain paragraphs have been added. Learned counsel appearing on behalf of the petitioner has relied upon the decision of this Court that in view of the provision of paragraph 173 of Pension Regulation for the Army 1961, which reads as under :

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

4. Rule 7, which has been relied upon by learned counsel for the petitioner is reproduced as under :

"7. In respect of diseases, the following rules will be observed :

(a) Cases, in which it is established that condition 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 of aggravation.

(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. Thus, it is contended that from the documents. Annexures-1 and 2 to the writ petition, it is apparent that the petitioner has been discharged because of the medical lower category, which is attributable, or aggravated by the military service because at the time of the recruitment of the petitioner in the year 1972, he was carefully examined by the competent medical authority and no ailment was reported and had that been so, the petitioner would never have been selected, recruited and appointed in military service. Learned counsel for the petitioner has relied upon two decision in Ram Niwas v. Union of India and Ors. 1997 (1) ESC 477 (All), in which relevant paragraphs 11, 12 and 13 are quoted as below :

"11. The first contention as raised by Sri Sinha also cannot be sustained because of the specific provision as contained in the said rule. As indicated above, Regulation 173 provides that a person would be entitled to disability pension if discharged on disability attributable to or aggravated by military service. There are, therefore, two conditions, namely, either the disability is attributable to service or that disability was aggravated by military service and it is 20 per cent or above. Even if it is admitted that the disability was constitutional and not attributable to military service even then such disability may entitle an individual, subject to the Act, to disability pension if such constitutional disease is aggravated by military service. Admittedly in the present case, the petitioner was enrolled and there was nothing on record to show that the petitioner was suffering from disease at that point of time or that it was so detected then. Since October, 1986 the petitioner remained in service till May, 1988, the Medical Board was held on 9.1.1988. Therefore, till that time he continued in the service by reason of which it can very well be presumed as to have been aggravated by military service. The rule prescribed in Appendix-11 of the said rules are the mode and manner in which question whether disability is attributable or aggravated by military service is to be determined. For our present purpose reference to para 7 (b) of determining disease are provided in para 7, Clause (b). which 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 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 cannot be deemed to have arisen during service."

12. Therefore, in case of disease whether it is attributable to or aggravated by

military service is to be determined as provided in Clause (b). Unless a note is not made at the time of individual's acceptance for military service, a disease leading to individuals' discharge shall be deemed to have arisen in service, meaning thereby attributable to service. In the present case nothing has been shown to this Court or there is nothing on record that there was any note at the time of acceptance of the petitioner in service. No such case has also been made out in the counter-affidavit to the extent that any such note was made at the time of acceptance of the petitioner into service. However, there is one exception even if no such note is given at the time of acceptance into service. The exception as mentioned therein is that if the medical opinion hold, for the reasons to be stated, that the disease could not be detected on medical examination before acceptance in service only in such case the disease shall be deemed not to have arisen during service. No such case has been made out in the counter-affidavit that there was any medical opinion that the disease could not be detected before acceptance for service. Nothing has been produced before to the Court to show that there was any opinion formed by the Board that the disease could not be detected before acceptance in service and that such opinion was backed by reasons.

13. Ministry of Defence, Government of India, had also published guide to Military Officers, Military Pension, 1980. In para 9, page 18, Chapter IV, dealing with the entitlement the rule prescribes the following guideline :

"(a) Cases, in which it is established that condition 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 of aggravation.

(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.

(c)

(d)"

6. The second decision relied upon by learned counsel for the petitioner is in Gurudas Singh v. Union of India and Ors. 1994 Lab IC 2170. Paragraph 2, which is relevant and relied upon by petitioner's counsel is quoted below :

"2. The claim of the petitioner has been resisted on various grounds including the one that the petitioner had never participated in any war and that symptoms of the disease developed in him after September, 1965, when he had returned from the Field area (Kutch). Finding him emotionally upset, worried and having disturbed sleep, the petitioner was treated in Military Hospitals, Ahmedabad,

Bhuj and Pune and he was considered unfit for further military service and discharged accordingly on account of "Anxiety State". The Medical Board had opined that the disability attributed to the petitioner was due to inherent personality trait and not affected by military service. It is submitted that the case of the petitioner was examined by C.C.D.A. (Pension) and rejected on July 16, 1966, on the ground that the disability from which the petitioner was suffering was not attributable to the army service, which in fact was stated to be existing before he joined the Army service. It is further contended that the petitioner was not entitled to the claim of grant of pension under Regulation 173 of the Pension Regulation Part I. 1961. It is contended that vide Rule 3 of the Entitlement Rules laid down in Appendix II to Pension Regulations Part 1, 1961, it is necessary that there should be a causal connection between disablement and military service for attributability or aggravation to be conceded. The claim of the petitioner is stated to be without any basis requiring no interference."

7. Learned counsel appearing on behalf of the petitioner further contended that the grant of disability pension is covered by the provision of Regulation 173 of the Pension Regulation for the Army, 1961. This provides as under :

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

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

8. The relevant portion of Appendix-II is being quoted as below :

(a) Cases in which it is established that 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 of aggravation.

(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."

9. Learned counsel for the petitioner has further relied upon a decision of the Apex Court in Civil Appeal No. 164 of 1993 arising out of SLP (C.) No. 4233 of 1992, Ex. Sapper Mohinder Singh v. Union of India, in which paragraphs 3 and 4 which are relied upon are quoted below :

"3. It has been contended on behalf of the appellant that in view of the expert opinion of the Medical Board, which examined the appellant, he should have been allowed disability pension at the rate of 10% and that the Chief Controller

of Defence Accounts (Pension) should not have disallowed the Disability Pension altogether. The learned Additional Solicitor General, representing the Union of India, in his reply, relied upon paragraph 7 of the counter-affidavit of the respondent stating that the Chief Controller of Defence Accounts (Pension) had consulted a higher medical authority before interfering with the assessment of the disability by the Medical Board and his decision, therefore, cannot be treated to be arbitrary.

4. We have examined the relevant materials and we do not feel satisfied with the plea taken in the counter-affidavit. No details of the consultation has been disclosed by the respondent, nor it is claimed that the appellant has been re-examined by any higher medical authority. We are not prepared to act on the vague allegations in the counter-affidavit referred to above. 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 examines the appellant again and comes to a different conclusion. Accordingly, we direct that for the period 1.8.1989 to 31.1.1993, the appellant shall be paid the disability pension at the rate of 40% and it will be open to the authority concerned to have the appellant re-examined by a properly constituted Medical Board for reassessment of the disability with effect from 1.2.1993."

10. In view of what has been stated above, it is abundantly clear that the stand taken by the respondents that the medical category, which has been determined by the Medical Board cannot be said to be attributable or aggravated due to the military service cannot be accepted. The disability pension is admissible to a person who is invalidated out of service of his having suffered a disability of 20% or more and the disability is found to be attributable to or aggravated by the military service. The attributability of the liability to the service has to be determined in accordance with the regulations which, inter alia, provide that disease which had 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. This fact is not disputed that the medical category is more than 20%, therefore, the view taken by the respondents that the petitioner is not entitled for the medical disability pension, is not correct and deserves to be set aside and is hereby set aside.

11. In view of what has been stated above, this writ petition is allowed. A mandamus is issued to the respondents to treat the petitioner to be entitled medically disabled person and other benefits, which have already accrued to him and to be paid to him. However, in the facts and circumstances of the case, the parties shall bear their own costs.