

(2004) 04 MAD CK 0145

In the Madras High Court

Case No : Writ Petition No. 5989 of 1997

K.N. Ramesh Babu

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Pension Regulations, 1961 — Regulation 173

Citation : (2004) 04 MAD CK 0145

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Ramaswamy Rajarajan, for the Appellant; Meera Gupta, ACGSC, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for a Writ of Mandamus to direct the respondents to grant disability pension for the disease suffered by him viz., "Bilateral Mixed Deafness" from the date of discharge viz., 24.6.1993 with consequential benefits of increase of percentage from time to time.

2. The petitioner claims that he was an Ex-Serviceman and he had served in Madras Regiment with effect from 13.4.1984 to 24.6.1993. After due medical checkup at the time of recruitment, he was given training with effect from 30.4.1984. He was also posted to serve at Sikkim with effect from June, 1985 which was a snow bound high altitude area where he was forced to face extreme adverse climatic conditions during 1985 and 1987. He was placed in a polluted atmosphere and required to drink polluted water. The petitioner claims that the same has affected his health condition. Subsequently, he was posted at Kanpur and Lucknow during 1985 and while he was reposted at Wellington Training Centre, he was admitted at Air Force Hospital, Bangalore, during July 1992. During 1993, he was posted to appear before the Medical Board and on the recommendation of the Medical Board, he was discharged from service under medical grounds on being invalidated from service i.e. with effect from 24.6.1993

being considered misfit under Medical category "EEE (P)" with an indication of "NEUROSIS" disease.

3. The petitioner submits that he has forwarded a petition to the second respondent on 12.8.1993 which was duly acknowledged requesting the grant of disability pension. There was no response from the second respondent and hence another representation was sent through one, K. Selvarathinam, a retired District Judge on 22.11.1993, for which a reply was given by the second respondent on 7.12.1993. The petitioner made further representation on 24.2.1994. The impugned order dated 7.3.1994 has been issued holding that the petitioner was not entitled to disability pension under the rules. However, a sum of Rs.8,320/- and Rs.6,760/- was granted as Invalid Gratuity and Death-cum-Retirement Gratuity respectively. The petitioner was further informed that he was discharged from the military service and his discharge was not attributable to/aggravated by service. In order to file an appeal, the certified documents were sought for and the second respondent by reply dated 11.5.1994 had informed that the documents were confidential and cannot be handed over to the individual.

4. Thereafter, the petitioner made an appeal to the Under Secretary to the Government of India, Ministry of Defence (Pension), New Delhi. On 10.10.1996, the first respondent had replied to the effect that the petitioner was not entitled to disability pension considering the fact that the disability is not attributable to nor aggravated by duties in military service. A separate order was also passed by the second respondent on 19.11.1996 based on the first respondent's rejection order dated 10.10.1996 and hence the above Writ Petition.

5. In the counter filed by the respondents, it is stated that the petitioner's claim that he was forced to work in extreme adverse climatic condition at Sikkim during 1985 and 1987 were not true. He was initially admitted to the military hospital at Wellington only on 15.2.1991 for "Adjustment Disorder". Subsequently, he was admitted to the military hospital for the same disease and was given treatment. In spite of repeated admissions to the hospital and continuous treatment, there was no hope of the petitioner becoming fit for military duty. As per the opinion of the Medical Board Authority, the cause of the disability was due to the petitioner's past history of drug abuse, family history with frequent maladjustment at home with his parents as well as wife. The petitioner was consuming alcohol daily about 3 pegs a day. His wife had separated from him three years back which was also a reason for the petitioner's depression and anxiety. As he suffered from psychiatric disorder, the medical board recorded that the disability was not attributable to nor aggravated by the military service. It is also stated that the disability due to which the petitioner had been discharged was not attributable to military service.

6. Learned counsel for the petitioner contends that the very diagnosis of the investigation of the petitioner was "neurosis". The contention that the disease had nothing to do with the service cannot at all be sustained. During 1985 and 1987, he was required to serve at Sikkim in severe adverse climatic conditions

which had affected his nervous system and therefore, the contention of the respondents that the disability was not referable to army service, cannot at all be sustained.

7. Learned counsel for the petitioner also refers to the medical board proceedings dated 20.5.1993. Reliance is placed on the entry at page 47 of the proceedings to which reference will be made subsequently. On the basis of the said entry, the petitioner contends that even in terms of the record, the disability was not attributable to the individual's own negligence or misconduct.

8. Learned counsel for the petitioner also refers to some of the decisions of the Courts which will be dealt with subsequently.

9. Learned counsel for the respondents refers to the Medical Board opinion and the entry at page 2 of the proceedings which disclose that the illness was due to the petitioner's own making and has nothing to do with the service conditions. The learned counsel also refers to the service particulars of the petitioner; his service at Sikkim was only during March, 1985 and 1987 and thereafter, he has served in different areas and it was only during 1991, the petitioner was found to be suffering from the disease and subjected to hospitalisation. As he had served only in peace areas, after 1987, the various contentions raised by the petitioner have no basis at all. The learned counsel also relies on a judgment of Kerala State in W.A. No.1734 of 1997, a batch of cases, dated 22.3.2000. The Full Bench while interpreting Regulation 173 of Pension Regulations 1961 for the Army, held that the burden of establishing that the injury or disease was on account of military service or aggravated by military service will be on the claimant.

10. A perusal of the summary and opinion dated 28.4.1993, which is at page 2 of the Medical Board Proceedings, discloses the following remarks:

"SUMMARY AND OPINION OF QSN LDR ALOK PANDEY, GRADED SPECIALIST IN PSYCHIATRY OF CH (AF) BANGALORE DATED ON 28 APR 1993

Sep Ramesh Babu is an old case of Neurosis med cat CEE (T-24 wks). He was presently admitted with feelings of sexual inadequacy, premature ejaculation, anxiety and depression, insomnia. Initially his problems were thought to be of organic origin in view of his long history of drug abuse (Cannabis). However, subsequently interviews revealed marked neurosis make up and intra psychic, anxiety. Ward observation brought out traits of low frustration tolerance, self-obstructive rape, acting out behavior. Physical exam revealed sympathetic over-activity like tremors; tachy cardia and palmar sweating. MSE revealed anxiety and depression. He also had initial insomnia.

Family history revealed frequent maladjustment's at home with parents as well as wife. His wife has separated from him three years back, consumes alcohol daily about 3 pegs a day. F-10 is satisfactory.

The individual has shown slow improvement with anxiolytics, antidepressants and

psychotherapy. His pathological personality on the border line axis, his neurosis make up and chronic maladjustments, call for a poor prognosis.

Recommended to be invalidated out of service in cat"EEE"

11. The above extract shows the circumstances which led to the disability and the ultimate discharge of the petitioner which arose out of his own personal conduct and due to family circumstances. It is not necessary to re-extract the particulars of the disease which the petitioner was suffering from as could be seen from the above extract, which includes also history of drug abuse.

12. In the back ground of the above facts, the burden of proof that the disability was only due to military service is very heavy on the petitioner. The only fact that he was serving for about two and half years at Sikkim cannot by itself lead to the inference that the disability suffered by him was only due to adverse weather conditions. It is seen that he had been serving in Sikkim from March 1985 to November 1987 but his illness and series of hospitalisation took place only from 1991. Therefore, the illness which he had acquired three or four years later cannot be attributable to his stay at Sikkim. The career particulars also disclose that since then, the petitioner was serving only in peace areas except for the period between March 1985 to November 1987, which is classified as "semi field area".

13. The medical opinion completely disproves the contention of the petitioner that the disability suffered by him was only due to his service in the Army.

14. A further comment on the entries made at page 4 of the medical proceedings is of no help to the petitioner. It is true that at page 4 under Column 3(a) as against the question, "was the disability attributable to the individual's own negligence or misconduct? If so, in what way?", the remark "No" has been entered.

15. A perusal of the filling up of the columns at page 4 discloses a mechanical manner of filling up of the columns. In fact, Column 3(b) requires particulars to be given as to whether the disability was not attributable to individual's negligence, whether it was aggravated by negligence or misconduct also. For that also the remark, "No" is made. With reference to other columns viz., Columns 3(c) to 3(h), remarks of "NA (Not Applicable)" is made. Therefore, a perusal of the remarks at page 4 discloses the mechanical manner of filling up the various columns without any positive or specific significance or with reference to actual facts. Such remarks cannot have the result of depriving or erasing the Medical Summary and Opinion, which has been recorded in the proceedings. No reliance can be placed on such mechanical entries at page 4.

16. I am also unable to accept any of the judgments cited by the learned counsel for the petitioner as they do not have any relevancy to the facts of the present case.

17. In Ram Pal Singh Vs. Union of India and Others, , the Supreme Court has

dealt with the case of an Ex-Serviceman who had suffered injury in Indo-Pack conflict while rendering service at war times. The fact of sustaining injury during war time and in the war field was not disputed and hence the Supreme Court held that the disability pension has to be granted to the Ex-Serviceman.

18. In *Ex-Constable Kushal Singh v. Union of India*[2001 (1) ATJ 72, the petitioner was discharged from service on account of Schizophrenia disease. On examination of the facts relating to the proceedings, the Punjab and Haryana High Court had recorded a finding that there was nothing on record to show that he was suffering from the said disease at the time of entry into the force and held that the petitioner was entitled to disability pension. The said facts cannot be compared to the facts of the present case, which relates to the disability acquired by the petitioner due to self inducement and reasons like drug abuse and alcoholism.

19. *Inder Jang v. Union of India and others* 2000 (1) ATJ 389, is a case which the Allahabad High Court dealt with the case of the claimant, who had suffered 40% disability while in service at high altitude and the facts were found to be proved that such disability arose only due to his service at the relevant point of time at high altitude and in the field area. In fact, the report of the Union Medical Board was to the effect that such conditions had aggravated disability.

20. No such materials are available in the present case. On the other hand, except for the period of two and half years, the petitioner had not worked in any adverse climatic conditions.

21. In *Jai Bhagwan Rohilla vs. The Chief of the Air Staff* 2000 (2) ATJ 88, the Delhi High Court had dealt with a claimant who was suffering from "Insulin Dependent Diabetes Mellitus". On facts, it was found that at the time of joining, there was no note of the fact that he was suffering from such a disease and that there was also no material to show that the said disease could not have been detected on medical examination before his entry into the service. Therefore, the High Court held that the disease of the petitioner was deemed to have arisen during the service.

22. Therefore, I am inclined to hold that the none of the cases on which reliance is placed by the petitioner is comparable to the facts and circumstances of the case in hand, which disclose that the disability was totally due to the conduct of the petitioner himself.

23. With the result, I do not find any reason to interfere with the rejection of the claim, which is impugned in the Writ Petition. The Writ Petition is dismissed. No costs.