

(2016) 02 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : SWP No. 1165 of 2002

Krishan Chand

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2016) 2 JKJ 429

Hon'ble Judges : Mr. Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Ms. Sindhu Sharma, ASGI, for the Respondents; Mr. K.D.S. Kotwal, Advocate, for the Appellant/Petitioner

Final Decision : Disposed off

Judgement

Mr. Mohammad Yaqoob Mir, J. - Admitted position as has emerged from the records is that the petitioner was enrolled in the Army (JAK

RIF) on 10.03.1958 as a Recruit (untrained soldier). On completion of his basic military training and after police verification, he was attested as a

Sepoy (Rfh) on 10.01.1959.

2. It is also admitted that the petitioner was boarded out of service with effect from 10.03.1967 for invaliding disability ""Sciatica Syndrome Left

Side"" in low medical category 'EEE'. Finally after medical examination, he was struck off the strength from the army service w.e.f. 10.03.1967.

The disability pension case of the petitioner had been forwarded to CDA (P) Allahabad on 29.03.1967. Same has been rejected on 23.06.1967

with an observation that the disability assessed was less than 20 per cent (15-19 per cent). As such no pension is admissible under rules. The

decision had been conveyed to the petitioner. In turn, petitioner has submitted

an appeal to the Hon'ble Defence Ministry on 8.03.1969 without success as the same has been rejected on 31.10.1969 on the ground that the disability was assessed at less than 20 per cent for which no disability pension is admissible under rules.

3. The petitioner had again submitted petition to the Defence Minister along with medical certificate, based on the direction issued therein, the petitioner had been brought before the Re-survey medical board. But the disability of the petitioner was again reassessed at less than 20 per cent.

4. Finally petitioner filed the petition bearing OWP No. 764/1998 before this Court for seeking direction for grant of disability pension. The said petition has been decided on 7.4.2000 with the directions to the respondents to consider the case of petitioner for grant of invalid pension in terms

of para 173-A of Pension Regulation for the Army-1961 (Part I) with the further direction that in case petitioner was found fit, his pension shall be

released as admissible under rules and a speaking order with reasons shall be conveyed to him. In compliance whereof, after proper examination, a

speaking order has been issued on 13.09.2000 wherein it has been stated that the disability was assessed at less than 20 per cent and invalidated

out of service in low medical category 'EEE', as such the petitioner is not entitled for grant of disability pension under para-173 and 173-A of

Pension Regulations. Thereafter again petitioner seems to have filed contempt proceedings and other representations. Again his case has been

examined at Army Headquarters which resulted in issue of an order dated 11.03.2002 wherein it has again been concluded that the disability has

been assessed at less than 20 per cent. Dissatisfied therewith, instant petition has been filed.

5. Learned counsel for the petitioner submits that the only issue which is now to be resolved in this petition is as to whether petitioner is entitled to

disability pension after his disability has been assessed at less than 20 per cent. The controversy has been recently set at rest by the Hon'ble Apex

Court in the judgment rendered in case of Sukhvinder Singh v. Union of India and Ors., Civil Appeal No. 2605 of 2010, decided on

25.06.2014.

6. Para 9 of the said judgment is advantageous to be quoted:-

9. We are of the persuasion, therefore, that firstly, any disability not recorded at

the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

7. Confronted with the legal position, learned ASGI vehemently submits that the petitioner's claim was governed by earlier rules and furthermore the judgment has been rendered in the year 2014. The submission has no substance in view of the pendency of lis. That apart, the case of the petitioner has been considered in the light of the regulations referred to in the judgment. There shall be no reason not to apply the same ratio to the case of the petitioner.

8. The disability of the petitioner is presumed to be above 20 per cent. It being so, petitioner is entitled to the disability pension. Respondents shall take all necessary steps required at their respective levels so as to finalize the process of grant of disability pension in favour of the petitioner in accordance with the rules within a period of eight weeks from the date copy of the order is served upon the respondents.

9. As a necessary corollary thereto, the order impugned dated 11.3.2002 pursuant to which the disability pension case of the petitioner has been rejected shall stand quashed.

10. Disposed of as above.