

(2018) 09 RAJ CK 0148

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 691 of 2008 In Civil Writ Petition No.4286 of 2004

Laxman @APPELLANT@Hash Union Of India

Date of Decision : 27-09-2018

Acts Referred:

Army Act, 1950 — Section 23

Army Rules, 1954 — Rule 5, 9, 12, 14(a), 14(a)(b), 19

Citation : (2018) 09 RAJ CK 0148

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Shyam Singh, Nidhi Khandelwal

Final Decision : Allowed

Judgement

MOHAMMAD RAFIQ, J

This appeal is directed against the judgement of the learned Single Judge dated 5.7.2007 whereby the writ petition filed by the appellant for grant of

disability pension with effect from 5.10.1961 together with arrears with interest and also the compensation amount of Rs.1.5 lakhs has been dismissed.

Shri Shyam Singh, learned counsel for the appellant has submitted that the appellant was fully fit when he was enrolled with the services of

respondents on 9.12.1960 and did not suffer from any disease. In fact, his enrollment was made in medical category 'A'. He passed the

recruitment test for Store Hand General Duties. However, while serving the respondents, he developed disability and was considered permanently

unfit for service and therefore invalidated out of service from 5.10.1961 in the lowest medical category 'E' due to Traumatic Cataract RT Eye

after 300 days of service cutting short his career in the Army at the young age of 19 years. This is borne out from the discharge certificate issued

as per Section 23 of the Army Act, Rule 12 of the Army Rules and Regulation 168 of the Regulations for the Army. It is argued that repeated

requests of the appellant for grant of disability pension went in vein. When he came to know that similarly situated persons were granted disability

pension, he submitted petitions before the respondents on 6.3.1989 and 14.12.1989, reply to which was sent by letter dated 15.2.1990. His claim for

disability pension was rejected by PCDA (P) vide letter dated 29.3.1962 on the ground that disability was not attributable to service as intimated by

letter dated 12.4.1962. He then submitted a petition on 28.4.1990 stating that disease developed after enrolment due to military service with request to

supply relevant documents. The respondents vide letter dated 12.6.1990 rejected his claim. He then submitted an appeal on 22.1.2004 before the

competent authority stating that he was illiterate poor man and lived in a remote village.

Learned counsel argued that the appellant did not suffer from any disease at the time of enrolment. As per Rule 5, 9, 14(a) & (b) and 19 of the

Entitlement Rules and Regulation 423(C) of Regulations for Medical Services of Armed Forces, he is entitled to disability pension as per Regulation

173 of the Pension Regulations for Army Part-I. His service/medical documents were prepared only in original and transferred to the Record Office

on discharge, which was responsible for custody and maintenance of Records. As per Regulations 36 and 623 of the Regulations for Army, pension is

payable for life and Records is claimant for initial grant, revision and re-assessment of pension and has to explain delay as per Regulations 83, 88 and

90 of the Pension Regulations for Army Part-II.

Learned counsel for the appellant has in support of his arguments cited the judgements of the Supreme Court in Ex. Gnr. Laxmanram Poonia (Dead)

through L.Rs. vs. UOI & Ors.-JT 2017 (2) SC 536, Union of India & Anr. vs. Rajbir Singh-JT 2015 (2) SC 392 and Union of India & Ors. vs. Angad

Singh Titaria-2015(5) SC 478 and Savitri Devi Mehta & Ors. vs. UOI & Ors.- (2005) 10 SCC 325. Learned counsel also cited the judgement of the

coordinate bench of this Court in Smt. Emna vs. UOI & Ors., D.B. Special Appeal (Writ) No.506/2003 dated 28.10.2003 and the recent judgement of

coordinate bench of this Court in Col. Naraian Singh (Retd) vs. UOI & Anr., D.B. Special Appeal (Writ) No.542/2008 dated 29.11.2017.

Even though Ms. Nidhi Khandelwal, learned counsel for the respondents, has opposed the appeal especially on the ground of delay. Considering the view consistently taken by this Court following the various judgements of the Supreme Court, we are persuaded to allow the appeal as admittedly the disability was incurred to the appellant after he joined the service of the respondents.

In view of the above, the appeal succeeds and is hereby allowed. The impugned order of the learned Single Judge dated 5.7.2007 is set aside and the

writ petition filed by the petitionerappellant is allowed and the respondents are directed to grant disability pension to the appellant from the date he was

invalidated from service. The arrears would be paid within a period of four months from today, failing which it shall gain interest @ 9% per annum

reckoned from three months thereafter.Â Â Â