

(2008) 12 RAJ CK 0015
In the Rajasthan High Court

Laxman Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Navy (Pension) Regulations, 1964 — Regulation 101

Citation : (2009) 2 RLW 1732

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the orders Annex.P-2 dated 22.06.1990, Annex.P-5 dated 10.01.2005 and Annex.P-6 dated 28.02.2005 and a direction to the respondents to grant him disability pension w.e.f. 25.07.1989 when he was invalided out from service.

2. Briefly stated the facts and circumstances of the case which are relevant and necessary for the decision of this writ petition are that the petitioner was recruited in Indian Navy on 04.02.1985 after thorough medical examination by the Medical authorities of the Navy, he was found medically fit in medical category "AYE" and at the time of his recruitment he was not suffering from any disease or disability. On being medically examined by the medical authorities of the Navy at the time of recruitment, his vision was 6/6 of both the eyes. The petitioner while in service and performing the Naval duties, suffered Retinitis Pegmentosa and was examined by the Medical Board of respondent after having rendered satisfactory services of over four years and five months he was discharged on 30.05.1989 vide Annex.P-1 on medical ground. According to the petitioner, the petitioner suffered from the disease Retinitis Pegmentosa while performing the naval duties and therefore, the disease for which the petitioner has been discharged and invalidated was attributable and aggravated by naval

services. The disability suffered by the petitioner while in naval services has been assessed to 80% arising out of and during the course of his employment with the Indian Navy and was directly attributable to the naval services. However, the disability of the petitioner has increased after his invalidment from Indian Navy. By the instant writ petition, a challenge has been made by the petitioner to the denial of disability pension to him.

3. A reply to the writ petition has been filed by the respondents stating therein that the disability suffered by the petitioner was neither attributable to nor aggravated by the naval services and therefore, the competent authority rejected the claim of the petitioner for disability pension vide its order dated 29.05.1990 and the same was communicated to the petitioner vide letter dated 22.06.1990 Annex.R/1. According to the respondents, Regulation 101 of the Navy (Pension) Regulations, 1964 read with the provisions of para 7.2 of the Government of India letter dated 31.1.2001, the disability pension may be granted to a person who is invalidated out from the service on account of disability which is attributable to or aggravated by naval service. According to the respondents, para 6 of Entitlement Rules for Casualty Pensionary Award, 1982 (for short the Rules of 1982 hereinafter) provides that the disablement shall be accepted as due to military service when it is certified by appropriate medical authority that the same is due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated thereby. According to the respondents since the petitioner was not entitled for disability pension and therefore, the benefits admissible to him i.e. invalid gratuity amounting to Rs. 4240A was paid to the petitioner.

4. I have heard learned Counsel for the parties.

5. It is contended by learned Counsel for the petitioner that at the time of recruitment of the petitioner by the Naval authorities, the petitioner underwent thorough medical examination by the Medical authorities of the Navy and on being extensively medical examined, he was found medically fit in medical category "AYE" and at the time of his entering/recruitment in Navy, the petitioner was not suffering from any disease or disability and therefore, whatever the disability, the petitioner has suffered is while in naval services and the disease suffered by him namely Retinitis Pigmentosa has occurred while in service almost after serving more than four years with Indian Navy and thus the disease suffered by the petitioner is attributable to and aggravated by naval services and the same has been assessed by the Medical Board of the respondent assessing the disability to the extent of 80% and therefore, the petitioner is entitled for the disability pension proportionate to his disability suffered while in service.

6. Along with the reply, Annex.R/3 Medical Board proceeding invalidating the petitioner has been filed. In Column No. 3 it has been mentioned "Did you suffer from any disability mentioned in question 2 or anything like it before joining the Forces? If so give details and dates, and answer against this column is "NO" as has been recorded by the Medical Board. The same Medical Board mentioned

that "This 22 years old young sailor with 4½ years of services complaining of inability to see after dusk. This he has noticed increasing over the last few months." No History of exposure, no such complaint in the family. On examination DVR 6/9 and DVL 6/9, he was recommended in category "EEE" to be invalidated out of service. The Medical Board against the column "Did the disability/ies exist before entering services" answered in negative i.e. "No". In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof, answer against which has been given "Constitutional disorder". The expression "Pigment has been defined in Medical Dictionary means a substance giving color. Physiologically important pigments include the blood pigments (especially hemoglobin), bile pigments, and retinal pigment. The pigment melanin occurs in the skin and in the iris of the eye. Important plant pigments include "Chlorophyll and the carotenoids. Para 5 of the Rules of 1982 provides that the approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

7. Clause 5 of the Rules of 1982 provides that Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that the disablement is due to a wound, injury or disease which:

(i) is attributable to military service, or

(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/hastening of the onset of a disability.

8. In Para 8 of the Rules of 1982, it has been provided that attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.

9. Under Caption "Onus of Proof, Para 9 of the Rules of 1982 provides that the claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

10. Learned Counsel for the petitioner has relied on a Division Bench decision of Punjab and Haryana High Court in Dharampal Singh v. Union of India 1998(4) Service Cases 644, in Darlyai Singh v. Union of India and Ors. 1997(3) WLC (Raj.) 693 and in Nathu Singh Vs. Union of India (UOI) and Others,

11. Per contra, learned Counsel appearing for the respondents relied on decisions of Hon"ble Supreme Court in R.K. Mobisana Singh v. Kh. Temba Singh and Ors. (2008) 1 SCC 747, in Union Of India and Ors. v. Keshar Singh (2007) 12 SCC 675 and a Division Bench decision of this Court in Union of India and Ors. v. Bhoora Ram 2006 (4) RLW 3018.

12. In Dharampal Singh v. Union of India (Supra), Navy Pension Regulation No. 101, Regulations for Medical Services of Armed Forces, Appendix-V and Para 423 came to be considered by the Division Bench of Punjab and Haryana High Court. In that case, the petitioner therein was permanently placed in category "Bee" and invalidated out of service. The claim for disability was rejected on the ground that disability neither attributed to nor aggravated by military service. The High Court held that a conjoint reading of rules show that invalidment from service is a necessary condition for the grant of disability pension, if no note is contrary is made at the time of individual's acceptance for naval service then disease which led to individual's discharge or death will be deemed to have arisen in service, the presumption is rebuttable provided reasoned medical opinion is given showing that the disease could have been detected on medical examination prior to acceptance for service.

13. The Regulation 101 of the Navy (Pension) Regulations, reads as under:

101. Conditions for the grant of disability pension.- Unless otherwise specifically provided, a disability pension may be granted to a person who is invalidated from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty percent or over.

Explanation (1).- The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the "rules. contained in Appendix V to these regulations.

Rule 2 of the Entitlement Rules reads as under:

Rule 2. Invalidment from service is a necessary condition for the grant of disability pension. An individual who at the time of his release under the Release Regulations-is in a lower medical category than that in which he was recruited will be treated as invalidated from service. Sailors who are placed permanently in medical category other than "AYE" and are discharged because no other alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service. Rule 3: Disablement or death shall be accepted as due to Naval Service provided it is certified that:

(a) the disablement is due to a wound, injury or disease which:

(i) is attributable to Naval Service:

(ii) existed before or arose during naval service and has been and remains

aggravated thereby;

Rule 4. There must be a casual connection between disablement and naval service for attributability or aggravation to be conceded.

Rule 5. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.

14. Considering the provisions noticed herein above, it was held that a conjoint reading of the rules extracted above shows that invalidment from service is a necessary condition for the grant of disability pension. Rule 2 of the Entitlement Rules contains a deeming clause regarding invalidment from service. A reading of Rules 3 to 5 and 8 of the Entitlement Rules and par 423 of the Regulations for Medical Services of the Armed Forces shows if no note to the contrary is made at the time of individual's acceptance for naval service, then the disease which led to individual's discharge or death will ordinarily be deemed to have arisen in service. This presumption is rebuttable provided a reasoned medical opinion is given showing that the disease could not have been detected on medical examination prior to acceptance for service.

15. In *Anil Kumar Misra v. Union of India* 1996(5) S.L.R. 534, Allahabad High Court held that the disease, which leads to discharge of an individual from the Army is ordinarily deemed to have arisen in service if no Note of it is made at the time of acceptance of individual for service in Armed Forces and observed that the concept of pension has now been changed as it is not merely a bounty but it is a right to property and that under Article 41 of the Constitution of India the State is under duty to provide public assistance to a disabled person and on that premises, the Allahabad High Court directed the respondents to pay the petitioner therein the disability pension.

16. In *Dariyal Singh v. Union of India and Ors.* (supra), this Court observed that a perusal of the Primary Medical Examination Report, which was prepared by the Recruiting Medical Officer on 28.1.1976 at the time of recruitment of the petitioner clearly indicates that no Note was made therein that the petitioner was suffering from Cranio Pharyngioma in the year 1991, the petitioner was deputed for operational duties in "Operation Rakshak" having location in district Kapurthala, Punjab, where his efficiency and response to training was erratic and indifferent. As per report dated 23.02.1992 of the Commending Officer 20 Kumaon Regiment, he remained immersed in some thoughts, he was quiet, uncommunicative and aloof. He was diagnosed Cranio Pharyngioma and was operated at AHDC on 24.03.1992 which was followed by. Radio therapy till July 1992. He was examined by the medical board on 21.12.1992 and its findings recorded by the Medical Board was that "A 34 years old serving soldier, a case of Craniopharyngioma (operated) in AHDC on 24 March, 1992 had full of radio therapy at Pune. Significant impairment of vision of right eye. Mentally

depressed, unable to carry out normal duties." This Court further observed that there is neither any medical opinion nor any report nor any reason has been stated that the disease Cranio Pharyngioma could not have been detected on medical examination prior to petitioner's acceptance of the service on 28.1.1976 or till 21.12.1992 when he was examined by Medical Board and on these premises this Court held that invalidating the individual on medical ground i.e. on account of disease suffered by him, 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 unless subsequently medical opinion holds, for reasons to be stated, that such a disease could not have been detected on medical examination prior to the acceptance of individual concerned for service and only then such a disease will not be deemed to have arisen during military service and on these premises the petitioner was held to be entitled to disability pension as the cause of disability that led to his discharge from service had arisen while in service and there is no evidence to the effect that the petitioner had been suffering from such a disease prior to his joining the Army Service or that such a disease was constitutional and was not detectable on medical examination prior to his acceptance of service.

17. In *Nathu Singh v. The Union of India and Ors.* (supra), Division Bench of this Court held that the denial of disability pension to the appellant therein for years together was a continuous wrong. It was negation and breach of Article 21 of the Constitution of India. It was the duty of the respondents to have paid the disability pension to the appellant from the date he was invalidated out i.e. 20.10.1968 relying on decision of Hon'ble Supreme Court in *S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another*, wherein the Hon'ble Supreme Court held as under:

The very denial of her right to family pension as held by the learned single Judge as well as the Division Bench is an erroneous decision on the part of the railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the railways. Question then arises on facts and circumstances of this case, the appellate Bench was Justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension ? In this case as noticed by us herein above, the learned single Judge had rejected the contention of delay put forth by the railways and taking note of the appellant's right to pension and the denial of the same by the railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned single judge observed that the delay in approaching the railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an

obligation of the railways to have computed the family pension and offered the same to the widow of its employees as soon as it became due to her and also in view of the fact her husband was only a gangman in the railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned single judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became duty to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.

18. In *Union of India and Ors. v. Keshar Singh* (supra) while considering para 7(b) and para 7(c) of Appendix II referred to in Regulations 48, 173 and 185 of Army Pension Regulations, 1961, the Hon'ble Apex Court held that a bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall 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. An exception, however, is carved out i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, Clause (c) of Para 7 makes the position clear that if a disease is accepted as having arisen in service it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions are due to the circumstances of duty in military service. The provision of Regulation 173 of the Army Regulations and Regulation 423 Attributability to service as also the opinion of the Medical Board came to be considered by Hon'ble Supreme Court. The Medical Board therein opined that the disability did not exist before entering service and it was not connected with service and on these premises, the Hon'ble Supreme Court held that the opinion of the Medical Board was clearly to the effect that the illness suffered by the respondent was not attributable to the military service and therefore, the respondent was not entitled to disability pension.

19. In *Union of India and Ors. v. Bhoora Ram* (supra), this Court held that Paragraph 7 (b) of Appendix II of the Pension Regulation creates presumption about the disease being attributable to or aggravated by military service unless noted at the time of enrolment but such a presumption is not conclusive; it is rebuttable.

20. In the instant case, as noticed above, at the time of recruitment/entering in to service in Indian Navy, the petitioner underwent thorough medical examination by the Medical authorities of the respondents and on medical examination of the petitioner extensively, the medical board did not find any disease or disability. Thereafter for number of years there had not been any such disease or the disability while in service. The disease said to have been occurred almost after completion of four years of service of the Indian Navy and during

this period the petitioner served at various places in the water territory of India as well Abroad and suddenly developed the disease. Even from the proceedings of the Medical Board which has been placed on record as Annex.R/3, it nowhere appears that the petitioner was suffering from such a disease at the time of entering to Indian Navy. It has not been disputed by the respondents that there is no such note when the petitioner was accepted and recruited with the Indian Navy that he was suffering from disease or that disease could not be detected. Neither there is any note nor any reasons to that effect and thus it can safely be concluded that at the time of recruitment of the petitioner with the Indian Navy, he was medically fit in all respect having medical category "AYE". Even his vision in both the eyes was 6/6. Had there been any eye/vision disease, the vision could not have been 6/6 and thus it cannot be said that the disease which the petitioner suffered after about more than four years of service was not attributable to or aggravated by the Naval service. Though the paragraph 7(b) of the Appendix II of the Pension Regulation as noticed above drawing the presumption about the disease being attributable to or aggravated by Naval services is rebuttable, but in the instant case, the same has not been rebutted by any evidence except the proceedings of the Medical Board placed on record which also do not rebut such a presumption, on the contrary, it supports the case of the petitioner to the extent that at the time of his recruitment, he was not suffering from any disease and his vision was recorded as 6/6 in both the eyes. The petitioner has placed on record the Service and Discharge Certificate of Prabhuram, Store Chief Petty Officer, 141242-F who is his real brother and after having served with Indian Navy for more than 21 years when discharged he was medically fit having medical category SIAI and therefore, it cannot be said that the disease suffered during the course of naval services of the petitioner is constitutional disorder. The medical board in arriving at such conclusion in its report Annex.R/3 has not assigned any reason and therefore, such a conclusion is without any basis and cannot be said to be conclusive. In such circumstances, it can be presumed that the disease suffered by the petitioner was attributable to or aggravated by the Naval services. The medical board proceeding invalidating the petitioner vide Annex.R/3 clearly shows that the percentage of disability suffered by the petitioner is 80% and therefore, in my view, the respondents were not justified in denying the disability pension to the petitioner for the disability which he suffered during the course of service. In this view of the matter, the writ petition deserves to be allowed.

21. Consequently, the writ petition is allowed. The orders impugned denying disability pension to the petitioner Annex.P-2 dated 22.6.1990, Annex.P-5 dated 10.1.2005 and Annex.P-6 dated 28.2.2005 are quashed and the respondents are directed to pay the disability pension to the petitioner from the date he was invalided. This exercise be completed by the respondents within a period of three months from the date of producing certified copy of this order. There shall be no order as to costs.