

(2019) 06 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (C) No. 2124 Of 2019

Madan Chandra Nath

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 13-06-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38, 49

Central Civil Services (Extraordinary Pension) Rules, 1972 — Rule 3A(1)(a), 3A(1)(a)(i)

Citation : (2019) 06 GAU CK 0036

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : D C Nath, D.C. Nath, S.K. Saharia, R. Goswami, U.K. Goswami

Final Decision : Allowed

Judgement

1. Ms. R. Goswami, learned counsel for the petitioner. Also heard Mr. U.K. Goswami, learned CGC for the Union respondents.

2. The grievance of the petitioner is that though the petitioner had served for 5 years 6 months and 28 days and he has been boarded out as medically unfit, after he was categorized in medical category "EEE (permanent)", he has not been given any pensionary benefits.

3. Learned counsel for the petitioner submits that the petitioner was enrolled as a Constable in the Border Security Force (in short, BSF) vide No.860651886 in 'D' Company of 123 Battalion, BSF on 12.06.1986 after he was found medically fit on medical examination. Unfortunately, after the petitioner joined service he developed certain mental disorder sometime in the year 1990 which according to the petitioner is attributable to or aggravated by the military service.

4. In view of the above medical condition, the petitioner was subjected to a medical examination by the Medical Board by the BSF authorities. After the petitioner was examined by the Medical Board, the Officiating Commandant, 123 Battalion (in short, Bn.), BSF, informed the petitioner vide letter dated

20.08.1990 that the Medical Board had categorized him as "EEE (permanently)", thus, permanently rendering him unfit for further service.

5. Though, the petitioner made a request to allow him to continue in service, the said request was not entertained and accordingly he was also informed that he will not be entitled to any pensionary benefit as he has not completed 10(ten) years of qualifying service. Respondent No.3 accordingly, issued a discharge certificate and discharged him from the service.

6. It is the case of the petitioner that even if the petitioner was not eligible for grant of pension under CCS (Pension) Rules, 1972, the petitioner would be definitely entitled to pension under CCS (Extraordinary Pension) Rules.

7. The petition has been contested by the respondent authorities by filing affidavit-in-opposition. The stand of the respondent authorities is that the petitioner was enrolled in BSF as a Constable on 12.06.1986 in 6 Bn. BSF and after completing the Basic Recruit Training Course, while he was posted at 111 Bn. BSF, faint and transient unconsciousness were noticed in the petitioner. Accordingly, the petitioner was placed under medical supervision. Thereafter, the petitioner was posted to 123 Bn. BSF on 19.03.1989.

It has been further stated that subsequently, in the month of May, 1989, the petitioner was diagnosed for symptoms of Grandmol Epilepsy at Guwahati Neurological Research Centre (GNRC). As per the medical reports, the petitioner faced attacks of epilepsy on 25.05.1989 at his home and on 16.02.1990 at Bagafa, HQ, 123 Bn. BSF. Accordingly, the Unit Medical Officer advised that the petitioner needs to be kept at Bn. HQ and is not to be entrusted with job involving handling of arms and ammunition. Later on 08.07.1990, the petitioner was placed under Low Medical Category i.e. "CEE (Permanent)."

In view of the above medical condition, he was examined by the Medical Board on 11.07.1990 and the Medical Board declared him to be in Low Medical Category i.e. "EEE (Permanent)" and recommended that the petitioner is unfit for further service in BSF.

8. Accordingly, in terms of the findings of the Medical Board he was ultimately discharged from service after following the procedures. However, since, the petitioner has not completed 10 years of qualifying service which is required for availing pension under Rule 38 of the CCS (Pension) Rules, 1972 which provides for invalid pension which has to be read with Rule 49 of the of the CCS (Pension) Rules, 1972, pension cannot be granted to him.

9. It is also stated that the petitioner is also not entitled to disability pension under the of the CCS (Extraordinary Pension) Rules, 1972 as his disability cannot be attributed to Government duty or can be said to be aggravated due to service condition.

Accordingly, it has been submitted that no case has been made out for grant of pension.

10. Heard learned counsel for the parties and perused the materials available on record.

11. As far as the payment of pension under CCS (Pension) Rules, 1972 is concerned, it is well settled that unless a person has completed 10 (ten) years of qualifying service, he will not be entitled to pension under the aforesaid rules, even for invalid pension.

12. In the present case, petitioner admittedly has not completed 10(ten) years of qualifying service, thus the question of payment of pension under the of the CCS (Pension) Rules, 1972 does not arise.

13. As a consequence, the only issue to be considered by this Court is as to whether the petitioner would be entitled to disability pension under the of the CCS (Extraordinary Pension) Rules, 1972 as claimed by the petitioner, though the same has been denied by the respondent authorities.

In this regard, it may be appropriate to refer to the relevant provisions of the aforesaid CCS (Extraordinary Pension) Rules, 1972 as may be applicable in the present case.

Rule 3-A(1)(a) of the aforesaid CCS (Extraordinary Pension) Rules, 1972 reads as follows:

3-A (1)(a) "Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which-

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby."

14. Perusal of the aforesaid Rule 3-A(1)(a) of the of the CCS (Extraordinary Pension) Rules, 1972 indicates that a person can be granted disability pension if the disablement is due to injury or disease which is attributable to Government service as provided under Sub-clause 1 of Rule 3A(1)(a). Sub clause 2 further provides that disability pension can be also be given if the disability is found to be existed before or arose during Government service and has been and remains aggravated thereby.

15. From the above, what can one infer is that a person who is boarded out on the ground of disability can be granted disability pension, if the said disability, because of which the employee has been released from service, is attributable to Government service or if such disability existed before or arose during the Government service and has been and remained aggravated thereby.

Accordingly, only if the petitioner fulfills either of the aforesaid conditions, he would be entitled to disability pension.

16. As regards the first condition, as to whether the disability is attributable to Government service, it has been strenuously argued by the learned CGC

respondents that it is not as clearly evident from the medical report.

17. It has been submitted by Mr. U.C. Goswami, learned CGC that the medical report categorically mentioned that though disability was contracted over in service it is not directly attributable to the condition of service.

In that view of the matter, the question of payment of disability pension does not arise.

Similarly, there is nothing to indicate that the said mental ailments which the petitioner was suffering from, got aggravated during his service and as such it cannot be said that the petitioner can be considered for grant of disability certificate even under the second condition contemplated under the rules.

18. However, Ms. R. Goswami, learned counsel for the petitioner has submitted that the fact remains that the petitioner at the time of enrollment was not found to be suffering from any such ailment and it was detected only after about 3 (three) years of his enrollment as also mentioned in the medical report (a copy of medical report as annexed by the respondent authorities in their affidavit-in-opposition dated 10.07.1991). It shows that the petitioner was diagnosed for symptoms of Grandmol Epilepsy at Guwahati GNRC on May, 1989 and he had developed a faint and transient unconsciousness at Nagaland during service at 111 Bn. BSF which was subsequently confirmed and second attack occurred on 25.05.1989 at his home and third attack on 06.02.1990 at Bagfa Bn. HQ. However, during the period of 16.02.1992 to 23.03.1992 no attack had occurred. On 24.05.1991 to 30.05.1991 there was again attack of faint and transient unconsciousness.

19. It has been submitted that the medical report further mentioned that there is no past history of head injury, no history of headache, no history of maturation, no history of tounge bite, froth from the month during attack, no history of tape worm infestation, no history of COM.

20. Learned counsel for the petitioner accordingly, submits that the aforesaid medical report clearly indicates that the petitioner developed the aforesaid illness only after 3(three) years of service and it became aggravated in course of his service.

If that is so, the case of the petitioner would be squarely covered by Sub-clause (i) to the second proviso to Rule 3-A(1)(a).

Learned counsel for the petitioner also submits that if the contention of the respondent authorities is that the said ailment was latent which could not be detected at the time of enrollment, it could not be a ground to deny as the second clause itself mentioned that even if such development has existed before as during the Government service, he shall be entitled to disability pension if it remains aggravated.

Therefore, assuming that the said ailment was there in latent form before he

entered service, aforesaid medical report clearly indicates that his disablement got aggravated.

21. This Court also finds force with the submission made by the learned counsel for the petitioner.

As mentioned above the medical records of the Medical Board clearly indicates that the said disease was detected in 1989 and he suffered from three attacks between the 16.02.1990. However, there was no attack between 16.02.1992 to 23.03.1992 had attacked again on 24.05.1991 and 30.05.1991 in this regard. All these happened after he joined service on 12.06.1986.

22. It may be apposite to reproduce the relevant portions of the Medical Board proceeding held on 10.07.1991 hereinbelow:

"It is a case of Grandmol Epilepsy diagnosed at Gauhati NRC on May'89. He had developed a faint and transient unconsciousness at Nagaland during the service at 111 Bn BSF and diagnosis confirmed by positive findings in EEC. Second attack occurred on 25.5.1989 at home and 3rd attack on 16.2.90 at Bagafa Bn HQ. Since after 16.2.1990 to 23.5.1991 no attack occurred on 24.5.91 and 30.5.91 there was again attack of faint and transient unconsciousness.

There is no past history of head injury. No history of headache, No history of headache, No history of maturation, no history of tongue bite, froath from the mouth during attack, no history of tape worm infestation, no history of CSOM.

At present he is on Tab Gardenal 60mg- 1 tab BD since 16.2.90. He used to take Eptolin 100 mg - 3 tab at bed time dialy from 27.05.89 to Jan' 90.

Past history

- Nothing relevant

Family history

- do

Personal history

- Not a smoker/alcoholic. He takes mixed diet.

Hospitalisation

- 16.2.90 to 3.3.90 -Unit Hospital

Categorisation

- CEE X 6 months wef 27.2.90 - by Unit MO

EEE X by Med Board wef 10.7.90

General Examination:

Moderately built, moderately nourished, young male aged about 25 years no

anaemia, jaundice, oedema, cyanosis, clubbing, NO lymphadenopathy."

23. Perusal of the aforesaid medical report indicates that the petitioner does not seem to be having any undesirable habit as he has been described as not a smoker/ alcoholic, and his past history has been recorded as not relevant. The general examination of his physical condition also does not indicate any case of anaemia, jaundice, oedema, cyanosis, clubbing, no lymphadenopathy etc. and he has been found moderately built, moderately nourished and his speech and memory all are normal. Even though, the Medical Report did not certify that the said ailment is directly attributable to condition of service, the fact remains that the Medical Board also stated that disability was contracted over in service.

24. The medical history also indicates that rather than improving, the ailment got deteriorated which compelled the authorities to discharge him from service. If the medical condition was not aggravated the question of discharge from service would not arise. The fact remains that the authority discharging the petitioner from service which would indicate that his medical condition had not improved, but got aggravated.

25. From the above what can be clearly inferred is that at the time of entering of service, nothing abnormal was detected as regards the mental condition of the petitioner and as such it can be presumed that he was not suffering from the said ailment but it developed only after he got enrolled in service.

26. In support of her contention, learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in Ex. Hav Mani Ram Bhaira Vs. Union of India and Ors. reported in 2016 Legal Eagle 1277.

Learned Counsel also relied in the decision of the High Court of Hon'ble Jammu & Kashmir in Brij Lal Vs. Union of India and others reported in 2016 Legal Eagle 161 where similar issue was dealt. It held that in case that if no mention is made out about disease of disablement at the time of entering in service, it can be presumed that the disability occurred during the course of service.

27. In the present case also, at the time of enrollment nothing abnormality about the mental condition of the petitioner was detected by the authorities and in fact he successfully underwent the training course which clearly indicates that he was not suffering from the aforesaid illness. As mentioned above, it was detected only in 1989 i.e. after 3(three) years of service without any medical problems. Though this Court does not wish to contradict the medical report that the said illness is not directly attributable to the service, it clearly indicates that it was developed during the service and it got aggravated.

If that is so, this Court would hold that the petitioner would be entitled to disability certificate under Rule 3-A(1)(a) of the aforesaid CCS (Extra Pension) Rules.

28. In view of the above, the present petition is allowed by directing the respondent authorities to grant disability pension under the CCS (Extra Pension)

Rules within a period of 3(three) months from the date of receipt of a certified copy of this order.

29. It is also made clear that since the petitioner was discharged from service on 10.01.1992 and he had approached the authorities for grant of disability pensionary benefit which was not allowed by the authorities, and as this Court hold that he is entitled to said benefit under Rule 3A(1)(a) of the aforesaid CCS (Extra Pension) Rules, authorities will grant the same w.e.f. date of discharge i.e. 10.01.1992.