
(2004) 05 DEL CK 0076
In the Delhi High Court
Case No : CW No. 2967 of 1989

Mahavir Singh Narwal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Citation : (2004) 111 DLT 550 : (2004) 74 DRJ 661 : (2004) 102 FLR 330 :
(2005) 1 SLJ 133

Hon'ble Judges : V.K. Jain, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : S.N. Bhatt, for the Appellant; Amit Bansal, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—This writ petition has been filed by the petitioner inter alias praying that the respondent be directed to grant the disability pension from the day he was discharged from service on 4th June, 1979.

2. The case of the petitioner is that he was enrolled in the Indian Army in the Jat Regiment on 31st December, 1966. The petitioner became a victim of duodenal ulcers due to the stress and strain of military service and was placed in temporary low medical category CEE for six months. In view of the said ailment the petitioner applied for discharge from the army on compassionate grounds on 19th February, 1979 after completion of 12 years of service. It is the case of the petitioner that on 11th April, 1979 the petitioner was brought before the Release Medical Board . The Medical Board after examining him down graded to medical category CEE (physical) permanent. It also recommended that the disability was 30% aggravated by stress of military service. It further opined that longevity of the petitioner has been reduced by one year. On 30th April, 1979 the Jat Regimental centre recommended grant of disability pension to the petitioner by letter dated 30th April, 1979. Learned counsel for the petitioner has contended that when the petitioner applied for discharge on 19th February, 1979 the petitioner was in temporary low medical category. The petitioner was later on

examined by the Release medical board on 11th April, 1979 . He was found to be in permanent low medical category with 30% disability attributable to army service. The case of the petitioner was resubmitted for consideration to C.D.A. (P) Allahabad .

3. On the other hand Mr. Bansal learned counsel appearing for the respondent has contended that the petitioner was not entitled to disability pension as the petitioner sought discharge on compassionate ground on the ground that there was no male member available at home to look after the property and household affairs. Reliance has been placed by the learned counsel for the respondent on Rule 173 of Disability Pension Regulations which is to the following effect:

" 173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II."

4. The question whether the disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II. On the basis of the aforesaid provisions in the Pensionary Regulations it was contended that as the petitioner was not invalidated from service on account of disability but has sought discharge on his own the petitioner will not be entitled to disability pension.

5. We have carefully considered the arguments advanced by the learned counsel for both the parties. Learned counsel for the petitioner has placed reliance on Ex Subedar Baljor Singh Vs. Union of India and others a Division Bench Judgment of this Court reported as 1996 6 SLR 142. However in that case the discharge was not sought on compassionate ground as has been done in the instant case. The question is whether on account of seeking discharge on compassionate ground the petitioner loses his right to claim disability pension although such disability had been attributable and aggravated on account of military service. The reliance placed by the learned counsel for the respondent on Pension Regulations 173 provides answer to this question. Regulation No. 173 lays down where disability is attributable or aggravated by military service and how same has to be determined under the rules in Appendix II. Rules 1 and 2 of Appendix II are as follow:

: "1. With effect from 1st April, 1948 in supersession of all previous orders on the subject, the entitlement to disability and family pension, childrens allowances and death gratuities will be governed by the following rules. Invalidating from service is a necessary condition for the grant of a 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. JCOS/ORS/NCS(E) who are placed permanently in a medical category other than "A" and are discharged because no 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 invalidated out of service.

2. Disablement or death shall be accepted as due to military service provided it is certified that :

(a) 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,

(b) the death was due to or hastened by

(i) a wound, injury or disease which was attributable to military service , or

(ii) the aggravation by military service of a wound , injury or disease which existed before or arose during military service."

6. On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability. It is also admitted case of the parties that the petitioner got disability on account of stress and strain of military service and his category was initially lower down temporary to CEE on 21st September, 1978 for a period of 6 months and after the Release Medical Board examined the petitioner on 11th April, 1979 it found the disability to be 30% aggravated by stress of military service and he was down graded to permanent low medical category . Once the petitioner was in low medical category according to Rules 1 and 2 of Appendix II of Pension Regulations 173 he shall be treated as invalidated from service. It seems that on careful consideration of the Pension Regulations 173, read with Rules 1 and 2 of Appendix II, the respondents themselves have recommended for grant of disability pension to the petitioner vide their letters dated 3rd April, 1986 and subsequently on 11th April, 1986 which is as under.

DISABILITY PENSION CLAIM : EX-NO 3157896 SEP MAHAVIR SINGH NARWAL.

1. Further to this Headquarters letter of even number dated 03 Apr 86.

2. The disability pension claim in respect of Ex No. 3157896 Sep Mahavir Singh Narwal has been re-examined threadbare by the competent authority. During the course of examination it is seen that the individual was placed in temporary low medical category "CEE" for six months with effect from 21 Sep 78. Having been placed in low medical category he had applied for discharge on compassionate

grounds on 19 Feb 79.

3. He was discharged from service on 24 Apr 79 after completion of all the medical formalities which are applicable in case of disposal of permanent low medical category personnel.

4. It has been opined by the competent authority that his discharge from service can not be legally termed as of "on compassionate grounds at his own request". But it should be considered as disposal of low medical category personnel because of non availability of suitable sheltered appointment for him. Therefore the cause and clause of his discharge from service requires change to facilitate him to get disability pensionary benefits.

5. In view of foregoing, necessary action may Therefore be taken to change the cause and clause of discharge and to initiate disability pension papers immediately . Action taken be intimated to this Headquarters latest by 30 Apr 86 and later a monthly progress report by 5th of each month be submitted till finalisation of his disability pension cause.

6. All previous letters issued on the subject will be treated as cancelled.

Sd/-

(P.N. Reddy)

Varishth Civilian Staff

Adhikari/SCS Shayak

Adjutant General/AAG

PS4 for Adjutant General."

7. The arguments advanced by the learned counsel for the respondents that these letters were not issued by the competent authority is not of any relevance for grant of disability pension. What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 and 2 of Appendix II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Rule 173. We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 up to date . For future disability pension the respondent may conduct another medical board to assess the percentage of disability of the petitioner. Arrears of disability pension be paid to the petitioner within a period of 8 weeks. If the same are not paid within 8 weeks the petitioner shall be entitled to the interest at the rate of 9% on the amount of arrears. With these directions the writ petition is allowed.

8. Rule is made absolute.