

(2000) 12 AHC CK 0108
In the Allahabad High Court
Case No : C.M.W.P. No. 39550 of 1998

Mahavir Singh Rawat

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 2, 3, 4, 7

Citation : (2001) 1 AWC 363 : (2001) 1 UPLBEC 626

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Anita Tripathi, for the Appellant; S.N. Srivastava, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

O. P. Garg, J.—The petitioner Mahabir Singh Rawat - a young boy imbued with an intense desire to serve the mother land, entered the Army Service at the age of around 17 years. Before he could pass through his hey days by ceaselessly toiling in the department, he was unfortunately boarded out within a period of about five years on account of affliction of a disease, known as Nurosis Anxiety, resulting in down-gradation of his medical category from "A" to "E" thereby rendering him unfit to continue in active service. The claim of disability pension preferred by him after having been boarded out and for an alternative appointment met with a Nelson's eye of the department. It is in these circumstances that the petitioner has to take the shelter of this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India.

2. The wood-cut profile of the case is that the petitioner, whose date of birth is 10th May, 1958 was enrolled in the service of Indian Army as an Instrument Mechanic on 27.9.1975. He was initially posted at Bhopal. During the period 1977-78, he was at Baroda. He was marched out of Baroda to join at Udhampur in Jammu and Kashmir where he remained posted during the period 1978-80, At

the time of the enrolment, petitioner was found to be medically fit in all respects. In the periodical medical tests also, he was never found suffering from any disease. It was for the first time in the month of June, 1980, when he was posted at Udhampur and he was medically examined at 148 Base Hospital, it was detected that he was suffering from the Nurosis Anxiety-300. He had undergone appropriate treatment. Ultimately on 27.10.1980, a Medical Board was constituted to examine the petitioner. It was found by the Medical Board that the petitioner had acquired disability on account of Nurosis Anxiety-300. The opinion of the Medical Board given in the column (d) of the confidential form. part III which is annexed with the Medical Board proceedings invaliding all ranks, a copy of which is Annexure-SCA 1 to the supplementary counter-affidavit filed by Lt. U. G. Pradhan, Assistant Record Officer, EME Records. Secundrabad (A. P.) which runs as follows :

The disability is constitutional and is not connected with service."

The disablement was assessed to be 20 per cent. The opinion of the Medical Board dated 27.10.1980 was duly approved by the approving authority on 8.11.1980. On the basis of the opinion of the Medical Board, as approved by the competent authority, the petitioner was invalidied and boarded out after having put in five years 63 days service. The case of the petitioner for disability pension was duly recommended as is clear from the entry made against column at serial number 21 of the form Part IV, which has been brought on record as S.C.A. 1. The officer in charge, Release and Hocking Coy further certifying the correctness of the particulars ascertained from the service record of the petitioner recommended for the sanction of disability pension as admissible under the rules. This certification and recommendation is contained at the end of Part IV of the form. The case of the petitioner for disability pension in spite of the recommendation of the immediate superiors failed to evoke response. His claim was rejected by order dated 6.8.1981. In spite of the delay caused in filing the appeal on account of the official rigmaroles, the appeal was entertained after condoning the delay but the petitioner did not meet with any better luck as his appeal was ultimately dismissed on 24.11.1997.

3. The stand taken by the petitioner is that he suffered the illness of Nurosis Anxiety on account of his continued posting for a period of about 3 years in an area of high altitude in district Udhampur (J&K) and since the disease, according to him, was the direct and proximate cause of stress and strain suffered by him during his posting at that area, he cannot be denied the privilege of disability pension. The petitioner has further prayed for an alternative job in view of the orders issued by the Government of India, Ministry of Defence under their letter dated 18.6.1973 as well as other circular letters.

4. The respondents have resisted the claim of the petitioner and have maintained that since disability of the petitioner was constitutional in nature and was not connected with the military service, as opined by the Medical Board of doctors, he is not entitled to the disability pension. Besides above basic plea. it has also

been asserted that since the petitioner had not put in 15 years minimum qualifying service, his case for service pension could not be considered in view of the provisions made in Para 132 of the Pension Regulations for the Army, 1961 (Part I) (hereinafter referred to as "the Pension Regulations"). The claim of the petitioner is further sought to be defeated on the ground that the writ petition suffers from serious laches and since the petitioner had earlier filed a Writ Petition No. 15707 of 1993 which was dismissed as withdrawn on 2.11.1998, the second writ petition for the same cause of action is not maintainable.

5. After the exchange of counter, supplementary counter and rejoinder-affidavits, Sri Gopal Das Mukherjee as well as Smt. Anita Tripathi appearing on behalf of the petitioner and Sri Gopal Chandra Saxena appearing on behalf of the respondents were heard at a considerable length.

6. Lest there be any confusion, it may be clarified that the normal service pension and the disability pension are two different elements of Army service. In the case of normal service or individual pension specified 15 years qualifying period of service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has occasioned due to any hurt, injury, or illness. Sanction of disability pension, therefore, is not dependent on any particular length ,of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations. It reads as follows :

"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."

This provision requires that invalidation from the military service should be on account of disability which is attributable to or aggravated by the military service and the same shall be determined under the Entitlement Rules contained in Appendix II. The Entitlement Rules provide for the manner of award of disability pension. Rule 2 (a) provides that disablement will be accepted as due to military service provided it is certified that the disablement is due to a disease which is attributable to military service or which existed before or arose during the military service and has been and remains aggravated thereby. This rule means that an employee who has been boarded out may suffer from a particular disease but if it aggravated after entering service resulting in his discharge from service due to the disability, it will entitle him to claim disability pension. It shows that even a disease contracted prior to the entry into service can be a basis to claim disability pension provided it aggravated after the entry into service. Rule 3

states that there must be a causal connection between disablement and military service for attributability or aggravation to be conceded. Rule 4 lays down that in deciding on the issue of entitlement, all direct and indirect evidence will be taken into account and benefit of reasonable doubt will be given to the claimant. These rules make it clear that a boarded out employee would be entitled to claim disability pension even if the disability he suffered is due to an illness that he suffered even before the time of entry into service but aggravated due to his military service provided the disablement has causal connection with the military service. In other words, the military service should have been the contributing factor to advance the disability. It is also provided that the claimant will be entitled to the benefit of reasonable doubt in all claims for entitlement. In other words, if the claimant suffered disability while in service it will be presumed that he is entitled to the disability pension.

7. Now it would be appropriate to advert to the other important rule regarding awarding of the disability pension in respect of illness. It is Rule 7, which may, for the sake of clarity, be extracted in extenso :

"7. In respect of disease, the following rules will be observed :

(a) Cases, in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) 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 were due to the circumstances of duty in military service.

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts, in the aetiology of the disease and of its normal development, to the effect that conditions of service e.g., exposure, stress, climate etc., may have had in its manifestation. Regard must also be had to the time factor (Also see Annexure).

(i).....

(ii) Common diseases known to be affected by stress and strain--This should be decided with due reference to the nature of the duties an individual has had to perform in military service. It may be that in some cases the individual had been engaged on sedentary duties when they will normally not qualify."

Clause (b) of Rule 7 above mandates that if no entry is made regarding the particular illness at the time of employee's acceptance for military service, the illness shall be deemed to have arisen while in service and this presumption is displaced only if the medical opinion for reasons to be stated holds otherwise and declares that the illness could not have been identified at the time of enrolment in service.

8. An analysis of the above provisions with regard to the award of the disability pension, in true perspective, leaves no room for doubt that an employee who has been invalided is entitled to disability pension even if he was suffering from the disease prior to his enrolment in service but it aggravated due to stress and strain of the duties while in employment. The benefit of reasonable doubt shall always be extended in favour of the boarded out employee if a claim for disability pension is made and it is established that at the time of enrolment in service, he was not having any ailment of the type for which he has been invalided. If the Medical Board has not specifically mentioned that the disease was of such a type and latent in nature that it could not be detected by any means at the time of enrolment of such an employee, it has, of necessity, to be presumed, in view of the unambiguous rules governing the disability pension, that the disability has come into existence by reason of the military service.

9. The petitioner was enrolled in service of the Army at a time when he was a young person of about 17 years of age. At that time, he was not found to be suffering from any illness rendering him unfit to be enrolled. The enrolment of the petitioner at the young age after vigorous, thorough and intensive repeated medical examinations would certainly rule out the possibility of his suffering from disease of Nurosis Anxiety. The petitioner served only for about five years. It was only in June, 1980, when it was detected on medical examination that the petitioner was suffering from Nurosis Anxiety-300. Prior to the said date, the petitioner was subjected to routine medical examinations but was not found suffering from any such disease. The disease obviously came into existence for the first time when the petitioner was posted in Udampur (J&K). This conclusion is fortified from the fact that in column No. 1 of Part III of the Form, a copy of which is Annexure-S.C.A. 1, against the entry "Did the disability/ies exist before entering the service?" the Medical Board has incorporated an emphatic "No". There is no mention of the fact throughout the forms pertaining to the medical opinion of the Board "that the disease (Nurosis Anxiety-300) could not have been detected on medical examination prior to acceptance (of the petitioner) for service." In the absence of such a note, it cannot be concluded that the disease which the petitioner suffered "will not be deemed to have arisen during service". In view of the above undisputed facts, one cannot but conclude that the petitioner had suffered from the illness of Nurosis Anxiety-300 by reason of the military service as the petitioner had not evinced any sign of such a disease when he was accepted for enrolment. Nurosis is a sort of mental illness characterised by irrational or depressive thought or behaviour caused by a disorder of the nervous system usually without organic change. Anxiety is

nothing but mental tension which is the reflection of the stress and strain - a case of extreme tension. If these symptoms could not be detected at the time of enrolment on account of their inherent latent nature, the respondents cannot adopt a callous attitude to overthrow the claim of the petitioner for disability pension as there is no specific mention of the fact as contemplated in Rule 7 (b) that the ailment was such which could not be detected at the time of the enrolment. The rules governing the disability pension are for the benefit of the employee. They are piece of beneficial legislation and they intend to promote social justice. In the case of any doubt, benefit has to go to the unfortunate employee whose term of employment came to be curtailed on medical grounds.

10. Sri Gopal Chandra Saxena learned counsel for the respondents placed reliance on certain observations made by the Apex Court in the case of Union of India and another v. Baljeet Singh, 1997 (8) Supreme 87. I have thoroughly studied the aforesaid decision and find that the observations made in the said case are not of universal application and should be confined in the set of circumstances of that case alone. The order of disability pension which was allowed by the High Court of Himachal Pradesh was maintained by the Apex Court though it was observed that the view of the High Court was not totally correct in reaching at that conclusion. In my view, emphatic reliance on the stay observations made in the aforesaid decision is misplaced. As a matter of fact, there are a number of decisions of this Court which fortify the conclusion that if at the time of acceptance of a person for enrolment In the Army service, he was not found to be suffering from any ailment, and the opinion of the Medical Board is conspicuously missing on the point that the illness leading to the disability could not have been detected at the time of enrolment by reason of the latent nature of the disease, the disability pension to an invalidied employee cannot be denied. A reference may be made to the decision in Gurnam Singh v. Union of India, 1992 Lab. I.C. 1594, as well as the decisions in Civil Misc. Writ Petition No. 12162 of 1991, Sardara Singh v. Union of India ; Gurdas Singh v. Union of India, 1994 Lab. I.C. 217 ; Jagdamba Prasad Dubey u. Union of India and others, Civil Misc. Writ Petition No. 22139 of 1990 decided on 26.9.1995 ; and Rom Niwas v. Union of India and others. 1997 (1) ESC 477(All). There is also a recent celebrated decision of Karnataka High Court in the case of M. K. Joseph v. Union of India and others 1999 (1) ESC 675 (Kar). The gamut of all these decisions is that the disability pension cannot be refused merely on the ground that the impaired physical capacity or illness is not attributable to military service. If there is a finding that the disability is attributable to military service, the petitioner was entitled to grant of disability pension as contemplated under the rules. It is well-settled proposition of law that award of pension is not a bounty from the employer or an act of charity. It is the indefeasible right of the employee who has earned the privilege by reason of his having been disabled while in service. In my view, the claim of the petitioner for disability pension has been rejected in an arbitrary and capricious manner. According to the rules, the petitioner is entitled to disability pension.

11. The claim of the petitioner for alternative job does not merit acceptance. Since the petitioner has been found to be medically unfit and has been reduced to category "EEE" he stands debarred from seeking employment. The benefit of the letter dated 18.6.1971 issued by the Government of India, Ministry of Defence does not come to his rescue.

12. Before parting, a passing reference may be made to the submission of the learned counsel for the respondents that the present writ petition is liable to be dismissed as it suffers from laches and in any case, this being the second writ petition for the same cause of action is not at all maintainable. I have given thoughtful consideration to the matter. It is true that the petitioner had earlier instituted Civil Misc. Writ Petition No. 15707 of 1993. In the said writ petition, a direction was sought that the pending departmental appeal of the petitioner be directed to be disposed of as early as possible. During the pendency of the writ petition, the departmental appeal of the petitioner was dismissed on 24.11.1997. The order rejecting the appeal came to the knowledge of the petitioner on 10.7.1998 and since the very purpose of filing of the writ petition stood frustrated, the petitioner got the writ petition dismissed as withdrawn on 2.11.1998. After the rejection of the appeal, a fresh cause of action arose and without loss of time, the petitioner filed the present writ petition on 23.11.1998 to challenge the order passed in appeal rejecting the claim of the petitioner for disability pension. The present writ petition, therefore, is virtually in continuation of his earlier Writ Petition No. 15707 of 1993. The petitioner has not slept over his rights and has been vigilant enough to get them enforced. The present writ petition cannot be faulted on any ground, whatsoever. It is neither belated nor it pertains to the cause of action which was adverted to in the earlier writ petition. To sum up, it may be held that the claim of the petitioner for disability pension which was otherwise covered squarely by the Pension Regulations read with Entitlement Rules, was rejected in an unlawful and unjustified manner and for no valid reason. In the conspectus of this finding, the writ petition has to succeed.

13. In the result, the writ petition is allowed and the orders impugned dated 6.8.1981 rejecting the claim of the petitioner for disability pension by the competent authority and 24.9.1997 dismissing the appeal of the petitioner are hereby quashed. The respondents are hereby commanded to consider, decide and grant disability pension to the petitioner as is admissible to him in accordance with law within a period of four months from the date of production of a certified copy of this order before the concerned respondents. No order as to cost is made.