
(2011) 05 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 573 of 2001

Manjit Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 2 JKJ 570

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Yaqoob Mir, J.—Vide order No. 3396827/Pen/DP dated 27.8.1997, issued by Controller of Defence Account (CDA), grant

of disability pension in favour of the Petitioner has been declined. Same order has been maintained by Ministry of Defence in the appeal vide order

No. 7(1650)/98/D(Pen-A & AC) dated 5.6.2000.

2. Aggrieved thereof, instant petition for issuance of Writ of Certiorari and Mandamus is sought to quash both aforesaid orders and to command

the Respondents to pay allowances, Army Group Insurance Fund, APP Fund, amount of gratuity along with interest from the date of discharge

from service on medical category/grounds.

3. Basically Petitioner was enrolled in the Army on 01 January, 1996. After a spell of one month and eight days, while undergoing basic military

training, felt giddy and became unconscious on 9th of February, 1996. He was admitted to Military Hospital, Ramgarh Cantt on 9th February,

1996. After various tests/investigations was transferred to Military Hospital, Namkum on 19th of February, 1996 for opinion of Medical

Specialist. He was diagnosed to be suffering from CNS(INV) Seizure. CT scan (brain) (Post Contrast) was carried out at Advance Diagnostic

Centre, Ranchi on 24th of February, 1996 on public expenditure. Then again was transferred to Command Hospital, Lucknow on 1st March,

1996 for opinion and management by Neuro-physician Surgeon for disposal like further retention in the service etc.

4. Thereafter Petitioner has been admitted to Command hospital (Central Command) Lucknow on 2nd March, 1996 where he was provided

specialized treatment and was kept under observation up to 9th of March, 1996 by the classified Specialist (Medicine & Neurology) of the

hospital. Neuro-physician has recorded the following opinion:

this patient is a case of Generalized Seizure without any neurological deficit or evidence of raised intracranial pressure. The CT scan picture of a

clinic enhancing lesion is non specific and is likely to disappear with anticonvulsant drugs alone. Workup for tuberculosis is normal and search for

cysticercosis elsewhere in body is negative. In view of the nature of illness he cannot be a fit soldier in Armed Force and recommended to be

invalidated out of service in Category 'EEE' with an advice to continue tablet Dilantin regularly for at least three years, not to take alcohol, not to

drive vehicles, swim or go near fire and to repeat CT Scan (Head) after 3 months and review by Neuro Physician.

5. On transfer back to Military Hospital, Ramgarh Cantt on 13th March, 1996, he was brought before an Invalidating Medical Board Military

Hospital, Ramgarh Cantt on 11th May, 1996. The Petitioner was invalidated out of service from 10th of June, 1996 in medical category "EEE

under Army Rule 13(3) item IV. The degree of disability of the Petitioner i.e. "Generalized Seizure-345" was assessed and recommended at 14 to

19% for two years as not connected with military service so constitutional in nature.

6. On account of disability "Generalized Seizure" Petitioner has been invalidated out of military service. The said disability has been opined neither

attributable nor aggravated by the military service, so has been concluded to be constitutional in nature and not related to service, by the Pension

Sanctioning Authority in consultation with Medical Advisor (pension).

7. It is the contention of learned Counsel for the Petitioner that when the

Petitioner was selected, he was found fit by the Board of Doctors so was placed in the medical category 'AYE' which stand for good health and physical fitness and it is only due to stress and strain of the Army service, the Petitioner has suffered the disease ""Generalized Seizure"", based on which he has been invalidated out of military service. So in terms of Rule 173 of Pension Regulations for the Army, 1961 Part I, Petitioner is entitled to the disability pension. In support of his submission, learned Counsel for the Petitioner relied on the judgments captioned S. Jaswant Singh v. Union of India and Ors. OWP No. 567/99 dated 31.12.2007, Anil Kumar v. Union of India and Ors. OWP No. 443/99 dated 17.7.2001 and Pishora Singh v. Union of India and Ors. SWP No. 1139/2005 dated 5.2.2009.

8. In opposition to the submissions as made by the learned Counsel for the Petitioner, learned Counsel for the Respondents contended that the Petitioner does not fulfill the condition for grant of disability pension under Rule 173 of Pension Regulations for the Army, 1961, Part I because the Invalidating Medical Board has assessed disability of the Petitioner as not connected with military service as it has not arisen during military service. It is also stated that there were no aggravating/attribution factors of service. It is also added that the Petitioner was enrolled in the Army, was put to medical examination but Recruiting Medical Authorities are not equipped with specialized services/devices/apparatus to detect any disease related to constitution of human body. Simply medical examination has been carried out. No note of any disease was made at the time of his recruitment which does not mean that the individual was free from constitutional disorder. In support of the contentions, learned Counsel placed reliance on the judgments captioned Union of India and Ors. v. Shri Baljit Singh dated 11.10.1996, Union of India and Ors. v. Keshar Singh Appeal (Civil) No. 762 of 2001 dated 20.4.2007, Controller of Defence Accounts (Pension) and Ors. v. S. Balachandran Nair Appeal (civil) 1646 of 1999) dated 21.10.2005 and Union of India and Ors. v. Surinder Singh Rather Appeal (Civil) No. 1960 of 2008 dated 13.3.2008.

9. The important question which survives for consideration is as to whether Petitioner is entitled to grant of disability pension when at the time of recruitment admittedly Petitioner was not suffering from any disease and then as

to whether subsequently disease detected is constitutional and only got aggravated during the course of training. For determination of the issue, noticing of certain rules of Pension Regulations for the Army, 1961, Part I is imperative.

10. Rule 173 reads as under:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service in non-battle causality and is assessed at 20 per cent or over.

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

12. Plain wording of the Rule would provide for grant of disability pension in favour of an individual who is invalidated out of service on account of disability attributable to or aggravated by the military service. Rule further provides that attributability or aggravation by military service has to be determined under the rule in Appendix II. In terms of Rule 4 Appendix II(entitlement rules), for grant of disability pension, pre-condition is that the individual must have been invalidated out of service.

13. Rule 5 reads as under:

5. The approach to the question of entitlement to causality 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.

In terms of Rule 5, when a member has been enrolled and no physical disability is noted or recorded at the time of entrance, he is presumed to

have been in sound physical and mental condition. In case he is subsequently discharged from service on medical grounds, any deterioration in his

health is presumed to have taken place due to service. Present case is covered by the said rules because admittedly on selection and enrolment,

Petitioner was medically examined, no note was recorded about any disability, therefore, he is presumed to have been physically sound and his

subsequent disease or deterioration in health is treated to be due to service.

14. The aforesaid rule is controlled by Rule 14 of the said Rules which reads as under:

14. In respect of disease, the following rule will be observed:

(a) Case 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 courses 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.

15. Sub-rule (d) would provide that in case medical opinion holds, for reasons to be stated, that the disease could not have been detected prior to

acceptance of service, the disease will not be deemed to have arisen during service.

While going through the record as made available, there is no such medical opinion to indicate that the disease could not have been detected on

medical examination prior to acceptance of service.

16. Sub-rule (a) of Rule 14 provides that in case it is established that the conditions of military service did not contribute to the onset of the disease

but influenced the subsequent course of the disease, same will fall for acceptance on the basis of aggravation.

17. In the instant case even if submission is accepted that the Petitioner was suffering from disease which was constitutional and onset of the

disease was not by the conditions of military service but it has to be accepted that the aggravation has influenced the subsequent course of the

disease which in turn would entitle the Petitioner to the grant of disability pension as permissible under Rule 173 quoted above.

18. At the time of enrolment, the Petitioner on medical examination was found medically fit, nothing adverse was recorded against him. Similar

situation has been taken note of in the judgment rendered in OWP No. 567/99 captioned S. Jaswant Singh v. Union of India and Ors. it has been

held ""that the malady of Schizophrenia from which the Petitioner came to suffer of which there was no entry at the time the Petitioner entered the

service came to suffer on account of hazards of military service and is attributable to the same."" It has been further held ""to say that the Petitioner

was suffering from the ailment from the very beginning or that the disease is constitutional in nature cannot be accepted.

19. In the judgment rendered in OWP No. 443/99 captioned Anil Kumar v. Union of India and Ors., it is noticed as to what has been held by the

Division Bench of this Court in the case captioned Union of India v. Rattan Lal 1999(2) SCT 39,

i/. That in case mention is not made regarding the disease or disablement at the time of entry in service, then it is to be presumed that the disability

occurred during the course of service.

20. In the judgment captioned Union of India and Anr. v. Shri Baljit Singh delivered on 11.10.1996, it has been held that ""in each case, when a

disability pension is sought, it must be affirmatively established, as to whether injury sustained was due to military service or was aggravated, which

contributed to invalidation for the military service.

21. In the judgment rendered in Appeal (Civil) No. 762 of 2001 captioned Union of India and Ors. v. Keshar Singh dated 20.4.2007, based on

Medical Board's opinion, it was held in the peculiar facts of the said case that the illness suffered by the Respondent was not attributable to the

military service. The conclusions as drawn by the learned Single Judge and learned Division Bench that it was not mentioned at the time of entering

to Army service that the Respondent suffered from Schizophrenia and, therefore, it was attributable to the Army service, was not accepted.

22. Applying the test to the facts of the present case, the position is altogether

different i.e. the Medical Board has not opined that the illness

suffered could not have been detected by medical examination prior to acceptance for service.

23. In the judgment rendered in Appeal (civil) No. 1646 of 1999 captioned Controller of Defence Accounts (Pension) and Ors v. S.

Balachandran Nair dated 21.10.2005, based on Medical Board's opinion in the given facts and circumstances, it was held that the illness suffered

by the Respondent was not attributable to the military service.

24. Same view has been taken in the judgment delivered in Appeal (civil) No. 1960 of 2008 captioned Union of India and Ors. v. Surinder Singh

Rathore dated 13.3.2008 i.e. "the Medical Board's opinion was clearly to the effect that the ailment suffered by the Appellant was not attributable

to the military service and also not aggravated due to it.

25. Applying the law as has been laid down in the above referred judgments, it has to be made clear that every case has its own facts and features

and it is in the backdrop of such facts and features, law has to be applied. In the instant case there is no such Medical Board opinion to the effect

that the ailment suffered by the Petitioner was not attributable to the military service and also not aggravated due to it. The Medical Board in

categoric terms, as reflected in the reply filed by the Respondents, has recommended the Petitioner to be invalidated out of service in category

EEE". Medical Board nowhere has suggested that the onset of the ailment was prior to the enrolment of the Petitioner in Army, even if it would

have been so in view of the above quoted rule position, then it has to be held that it got aggravated due to military service.

26. In the backdrop of aforesaid facts and law, both orders dated 28.7.1997 and 5th June, 2000 are quashed. Respondents are directed to

accord fresh consideration to the case of the Petitioner for grant of disability pension from the date he has been invalidated out of service. Such

exercise of consideration shall be completed within a period of six weeks.

27. Petition accordingly succeeds.

Record as has been produced by the learned Counsel for the Respondents be returned back.