
(2002) 09 DEL CK 0289
In the Delhi High Court
Case No : C.W.P. No. 2713 of 1999

Md. Tanwir Alam	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 17, 27, 7
Pension Regulations, 1961 — Regulation 173

Citation : (2002) 09 DEL CK 0289

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Kuldip Singh, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The petitioner was enrolled with Army in the year 1991 as "Nursing Assistant". He completed his training, which included physical, mental and classroom studies successfully. He became a full-fledged soldier upon subscribing oath/attestation on 30.03.1993. He, however, within a short period invalidated out of service vide order dated 12.07.1993 on medical ground of suffering from Schizophrenia.

2. The contention of the petitioner is that he never suffered from the said disease nor there is any family history in relation thereto. The petitioner filed a representation claiming disability pension from the respondents, which was rejected by an order dated 05.05.1994 on the grounds that (a) his disability was not attributable to military service; and (b) he did not fulfill the pre-conditions. Therefore, namely, the said disease existed prior to his joining the services and remained aggravated thereby.

Aggrieved by an dissatisfied with the said order, the petitioner preferred an appeal to the Ministry of defense, New Delhi on or about 10.05.1994 and a representation to the President of India and to Secretary to Govt. of India on or

about 25.08.1995. On or about 20.05.1996, the petitioner again made a representation before the President of India questioning the said order dated 12.07.1993 whereby he was invalidated from the service on medical ground.

According to the petitioner, he had undergone medical tests by specialized Doctors and they are of the opinion that he had not been suffering from any mental disorder whatsoever.

3. In the aforementioned situation, the petitioner has filed the present writ petition inter alia claiming for the following reliefs:-

"(a) A writ, order or direction for quashing the discharge certificate No. 1738 dated Nil of respondent invalidating the petitioner out of service on medical grounds and reinstate the petitioner into service with retrospective effect;

(b) A writ order or direction for setting aside the order dated 5.4.1994 and 20.5.1996 rejecting the claim of the petitioner for disability pension;

(c) A writ, order or direction for directing the respondent or any competent authority to conduct remedial exam of the petitioner and if found medical fit after the examination to re-instate the petitioner with all consequential benefits, if the petitioner is not found fit then grant the petitioner disability pension and retiral benefits with all consequential benefits with 18% interest;

4. It is not in dispute that the matter relating to grant of disability pension is referable to para 7(b) of Appendix (II) (Entitlement Rules) to Pension Regulations, which reads thus:-

"A disease which lead 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 individual's acceptance for military service."

5. Mr. Kuldip Singh, the learned counsel appearing on behalf of the petitioner, would submit that the impugned order cannot be sustained in view of the fact that the concerned respondents had failed and/or neglected to raise the presumption in terms of the aforementioned rule.

The learned counsel would contend that having regard to the fact that no note had been recorded at the time of his entry into service, it was obligatory on the part of the respondents herein to raise the presumption to the effect that he suffered from the said disability because of the military service or the same was aggravated thereby. In support of the said contention, reliance has been placed on Subhash Chander (Ex. Bdr.) v. Union of India 1996 (1) SLR 82.

6. Mr. A.K. Bhardwaj, the learned counsel appearing on behalf of the respondents, on the other hand, has drawn our attention to the fact that the said disease Schizophrenia was considered as not related to his military service by Invaliding Medical Board as well as by MA (P) viz. the competent medical authority under Rules 17 and 27(c) of the Entitlement Rules.

The learned counsel would contend that having regard to the fact that the petitioner was invalidated within a short period of service, it is beyond any cavil of doubt that the said disease was not attributable to military service. The learned counsel in support of the said contention has relied upon an unreported decision of the Apex Court in Union of India and Anr. v. Shri Baljit Singh being Civil Appeal No. 13272 of 1996 arising out of SLP (C) No. 9366 of 1996 decided on 11.10.1996.

7. The respondents have issued an Army Order bearing No. 331/56, which is in the following terms:-

"AO 331/56 Pension - JCOs / OR/NCs (E):-

1. The attention of all officers-in-Charge, Regiment / Corps Record Offices is drawn to the following facts:-

(a) The pension sanctioning authority (i.e., the Government of India) which delegates its authority to the Controller of defense Accounts (Pensions) Allahabad decides whether or not a death, disease or injury is attributable to or aggravated by military service and a pension is admissible under the Rules. Certain special and doubtful cases are referred to the Government of India itself for decision.

(b) Medical boards and military authorities do not decide cases they only express their opinions to assist the pension sanctioning authority.

(c) No case is to be considered as neither attributable to nor aggravated by military service until it has been so decided by the Government of India or its delegated authority.

2. All cases occurring in peace or field service areas of:-

(a) Death from disease,

(b) Invalidment on account of disease,

(c) Death from injuries, suicide or murder,

(d) Invalidment on account of injuries will be submitted for claim for disability or family pensions by the Officers-in-Charge, Regiment/Corps Records offices to the Controller of defense Accounts (Pensions), Allahabad.

3. The attention of the Administrative and medical authorities concerned with regard to the completion of documents pertaining to disability and family pension claims is particularly drawn to Army Orders 448/50 and 301/55, as amended and other instructions on the subject issued from time to time.

4. Army Order 1754/43 is HEREBY CANCELLED"

8. It is not in dispute that in terms of paragraph 173 of the Pension Regulations, disability pension is to be granted to an individual, who is invalidated out of service on account of disability, which is attributable to or aggravated by military

service and is assessed at 20% or over. It has further been laid down therein that the question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.

9. By an order dated 05.04.1994, a sum of Rs. 1,403/- was sanctioned towards gratuity stating:-

DISABILITY PENSION

1. Your disability pension claim was submitted to the Chief CDA, Allahabad who has decided vide their letter No. G-3/ 85/329/9/93 dated 21 Mar. 94 that the disability from which you suffered during your service in the Army and on which your claim is based on:-

(a) is not attributable to Military Service; and

(b) does not fulfill the following conditions namely that is existed before and remains aggravated thereby;

.....

2. In view of the above, you are to entitled to disability pension under Army Pension Regulations.

.....

4. However, disability invalid service element gratuity of Rs. 1,403/- for your qualifying service has been sanctioned and further communication will follow.

5. If you desire to appeal against the decision of pension sanctioning authority you may submit your appeal addressed to the Ministry of defense, Govt. of India, New Delhi on such grounds as you deem fit to put forth through this office, but not later than six months (6 months) from 21 Mar. 94."

10. It is not in dispute that against the order of invalidation, the petitioner preferred an appeal. However, the appellate authority by reason of the impugned order dated 20.05.1996 rejected the same stating:-

"Registered

No. 7/704/94/defense/Pension/

Appeal Board.

Govt. of India, Ministry of defense.

New Delhi, 20-05-1996.

To,

Ex.Sep.Md. Tanvir Alam,

Mohalla-Dilawarpur,

P.O. & Distt. Munger, Bihar.

Sub:- Appeal against the denial of disability pension of Ex. Sep. Md. Tanvir Alam, AMC No. 13984225.

Sir,

I have been directed to inform you that the first appeal board has fully considered on your above-mentioned appeal.

2. You had been discharged from the service on medical ground due to "Schizophrenia".

3. You had been discharged from the service on medical grounds on the basis of physical (anatomical) disorder. By going through your investigation service/ medical documents, the "Appellant Medical Board" has detected that your incurable disease had started during the training in the peace area. There is no past history of any pressure or tension of untenable service on you. Disease has occurred within an year of your recruitment. There were no delay in Diagnosis of the disease and in the treatment. Neither you got the Head injury nor you got the serious disease of walling of your body. This disease is not attributed to Military service. The opinion of Medical Specialist is that your disability is not attributed or aggravated due to Military service. Hence, in this condition, according to rules you are not entitled to get the Disability pension.

4. Therefore it is not possible to accept your request and same is regretted.

-sd-

Vandana Sharma

For Add.Asst.Secr.Govt. of India."

11. The Central Government also in its order dated 20.05.1996 observed that as the disease started during his training period, where for the pressure or tension had no nexus and further in view of the fact that within a short time, the same was diagnosed, he was not entitled to such pension. It had further been held that the petitioner did not receive any injury of his head nor he suffered any disease during the said period.

12. It may be true that Rule 7(b) of Appendix (II) (Entitlement Rules) raises a presumption to the effect that in the event no note of it has made at the time of his acceptance of military service, the same had arisen during such service. According to the respondents, however, Schizophrenia is not one of such diseases of which any note could be made at the time of his entry into service. Presumption so raised is a rebuttable one. In the aforementioned backdrop, we may consider the decisions cited at the bar.

13. In Subhash Chander's case (Supra), the respondents did not place any material on record to show that the petitioner has been suffering from mental disorder at the time of his entry into service and the said disease could not be

detected at that point of time. It was noticed:-

"12. Reverting to the present writ petition the respondent has not placed any material on record to show that the petitioner was suffering from mental disorder at the time of his acceptance into service and the said disease could not be detected at that point of time. Rather the opinions of the Medical Boards (Annexure R-1 and R-2) clearly show that the petitioner was not suffering from the said disability when he entered service as the same started while he was employed in a forward area. The petitioner did not have any family history of mental illness. In this regard it will be advantageous to extract the said opinions in so far as they are relevant.

Annexure 1 dated December 2, 1987 Medical Board proceedings.

"The above features are diagnostic of schizophrenia (ICD 295) he has been treated with neuroleptics, convulsive therapy, psychotherapy and a period of sick leave to which he has shown good response. No active psychotic features in him now. His illness started while he was employed in forward area. No part of family history of mental illness. Premorbid work record is good. Motivation towards service is strong."

Annexure R-2 dated 20.8.90 Opinion of the Medical Board

1. Did the disability / lies exist before entering service. No.

Learned counsel for the respondents invited my attention to the opinion of the Medical Board recorded on September 3, 1990 wherein the cause of disability was given as constitutional in nature. He submitted that this was enough to disallow disability pension to the petitioner as disability was not attributable to the military service. He also relied upon two decisions of this Court in Ex. Hav. Index Singh v. Union of India and Ors. (CWP No. 4213 of 1993) decided on October 4, 1993 and Shri Pardeep Kumar Singh v. Union of India, (CWP 3566 of 1993) decided on February 20, 1995. These cases do not help the respondents as they are distinguishable in view of the peculiar facts of the present case, namely, that the disease of the petitioner started while he was employed in a forward area and there was no family history of mental illness in his case. Besides the disability did not exist before the petitioner entered service. A conjoint reading of the aforesaid Regulation 173 and Rule 7(b) leave no manner of doubt that if no note of the disease was made at the time of individuals' acceptance for military service or no note of it was made at the time of his discharge that the disease was such as could not have been detected on medical examination prior to his acceptance for service, the disease will be deemed to have arisen during service."

14. However, in the instant case, the petitioner was not posted at the front. He was merely undergoing training; and he developed the said disease within a short period.

We agree with the contention of the respondents that in a case of this nature, it

may not be possible to note the same at the time of entry into service, unless it is voluntarily disclosed.

15. Regulation 173 of the Pension Regulations Part I of 1961 confers a right upon an invalidated person to earn disability pension when the injury or any disease is attributable to or aggravated by military service and is assessed at 20% or over. The condition precedent for getting the disability pension must, Therefore, have a direct nexus that the disease or disability is directly attributable to or aggravated by the military service. The question as to whether the attributability and/or aggravation is directly relatable to the military service or not must be considered in terms of the provisions of Entitlement Rules for Casualty Awards, 1982. In terms of Rule 8 of the said Rules, attributability and/or aggravation shall be conceded, if casual connection between death and/or disablement and military service is certified by the appropriate medical authority. Such is not the case here. In terms of Rules 17 and 27(c) of the Entitlement Rules, the appropriate medical authority considered the petitioner's case and came to the conclusion that the disease Schizophrenia from which the petitioner suffered was not related to his military service. As noticed hereinbefore, the petitioner had preferred an appeal there against and the appellate authority was also of the same opinion.

16. The Apex Court in Baljit Singh's case (Supra) has categorically held:-

"He further contends that as per the medical report the injury was sustained by him while he was in service and that, Therefore, it has been presumed that it was during service and accordingly must be attributable to military service. On a consideration of the rules, we think that the contention of Shri Malhotra merits acceptance. It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred 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 remaining aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from Clauses (a) to (d) of paragraph 7, which contemplates that in respect of a disease the Rules enumerated there under require to be observed. Clause (c) provides 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 the onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of Doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury

sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion. However, having regard to the facts and circumstances of this case, we do not think that it is an appropriate case for interference."

17. Having regard to the finding of the fact arrived at by the competent authority to the effect that the disease of the petitioner is not directly attributable to military service, but the same was a constitutional disorder, we are of the opinion that no case has been made out for interference with the impugned orders.

This writ petition is accordingly dismissed but without any order as to costs.