
(1996) 03 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 9539 of 1993

M.K. Joseph

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (1997) 4 KarLJ 501

Hon'ble Judges : V. P. Mohan Kumar, J

Judgement

1. This is the story of a soldier who having spent best part of his life in the cause of the Country is now denied what is legitimately due to him and is compelled to seek relief from the Court of law. The normal avenues which should have otherwise come to his rescue and meted out justice have turned a Nelson's eye to his grievances.

2. The facts of the case, in brief, are as follows:

The petitioner was enrolled as a Jawan in the year 1963 in Madras Regiment. In 1972, he was serving in Jammu and Kashmir and while on a routine check-up, it was discovered that he had a chest complaint. He was treated in the Military Hospital where it was discovered that he was suffering from "Aortic Stencsis". There upon he was demoted to Medical Category CEE from Medical Category AYE with effect from 1-5-1972. AYE-Category classifies persons fit for active service, whereas CEE Category classifies persons with impaired physical capacity. He continued medication and was in that category for four years. Thereafter, he was upgraded to Category AYE again. He was thereafter again suspected to suffer from "Systolic Murmur". He was referred to Pune where the Medical Board, after examining him upgraded him to AYE Category on 29-6-1980. He was later promoted as Naib Subedar on 24-5-1982. Still later he was promoted as Paid Acting Subedar with effect from 12-9-1988.

3. He was serving in various stations thereafter. In December, 1988, he fell ill and was hospitalised. It was discovered that he suffered from "Aortic Valvular

disease Systemic Hypertension". He was thereafter downgraded again into CEE Category. He continued with the treatment. A series of treatment at various hospitals made only nominal improvement. He was found to suffer from "Multiple Intracranial Haematomas with Hypertension". Even after prolonged treatment he did not improve and thereafter he was referred to the Specialist in Neurology. There was no response to that treatment as well. He was hence, brought before the Medical Board who finally invalidated him with effect from 7-6-1990 in Category CEE. He has by then practically become a vegetable.

4. At the time of his invalidation, he was serving in the rank of Paid Acting Subedar. He was awarded the normal pension that he earned for his service of 27 years 8 months and 3 days. It was fixed at Rs. 2,524/-. The petitioner claimed that he is entitled for disability pension as well. The record office put up the case of the petitioner to the 2nd respondent for computing the disability pension. The 2nd respondent by Annexure-F order rejected the claim. Annexure-F is a cyclostyled format with certain blanks which has been filled up by the concerned officer.

5. Aggrieved, Annexure-G appeal was preferred by the petitioner to the 1st respondent herein. By Annexure-A order, the said appeal was also rejected. In doing so, the Appellate Authority stated thus:

"3. The disability on account of which you were invalidated out of service is a constitutional disease. On perusal of your service/medical documents, the Appellate Medical Authority has found that both the I.Ds. stated above are constitutional disease and considered these are unconnected with service. There is no exceptional or unusually severe mental or physical stress due to service factors. In view of the above that your disability has been regarded by the Medical Authorities as neither attributable to nor aggravated by military service, you are not entitled to disability pension under the rules".

The petitioner impugns Annexures-F and A orders in this proceedings for various reasons.

6. The primary condition for grant of disability pension is as laid down in Regulation 173 of the Pension Regulations which 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 disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II".

Therefore, the clause requires that the invalidation from the military service should be on account of a disability which is attributable to or aggravated by military service and the same shall be assessed in accordance with Appendix-II. The particular clause in Appendix-II relied on by the petitioner is at Clause 7. It

reads thus:

"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 on 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 and 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". Admittedly, the petitioner discharged active service from 1963 till 1973. Temporarily he was downgraded to CEE Category whereafter again he was upgraded to AYE Category. From 1980 to 1988 he was placed in AYE Category and had served in various places. He had led an active life. The view taken by the authorities is that the illness he suffered is neither attributable nor aggravated by military service.

7. The respondent has filed a statement of objections. It merely reiterates what is stated in the impugned orders.

8. It is difficult to accept the stand of the respondent. If the petitioner had any such disease even at the time of his initial recruitment, first of all one fails to see why such an officer was recruited into service. If, at the time of the recruitment, similar deficiency existed, as required under the rules referred to above, it ought to have been entered in the medical history of the candidate. Impliedly, it would mean that the illness if at all any was not such that it would disable active

service. Again, the particular illness that the petitioner suffered from is not something he would have contracted by coming into contact with a person who may suffer from it. It is not a contagious illness. This is purely an illness which one acquires due to nature of duties discharged coupled with stress and strain attached to the said duty.

9. The petitioner evinced the symptom of the illness for the first time in the year 1972. There is no case that he was invalidated before that date or that he was medically downgraded. There is also no case that he was not taking active part in the service. He was actively engaged in discharging his duties. It was then that he complained of chest pain and it was discovered that he had Aortic Stenosis. This ailment can only be by virtue of direct result of stress and strain that the individual had to suffer while discharging his official duty. The petitioner was as a result downgraded to Category C. He remained in the said category for four years. He was again upgraded to AYE Category. He had again undergone treatment for the ailment and he recovered. It means, he had recovered from the ailment and was found fit for active duty as a result of the treatment. There is no case that he had proceeded on leave or that he was assigned any duty which was different from what he was doing prior to 1972. Again he had a setback and it was suspected that he had a systolic murmur. He was referred to Pune where catheterisation of the heart was carried out. He was thereafter upgraded to Category-AYE. He served in forward area between 1980 and 1988. It is not disputed that he was actively discharging the duty during that period. The next spell of ailment began in November, 1988. The ultimate result was the paralytic stroke he suffered resulting in his discharge from service.

10. In the light of the facts stated above, it is difficult to conclude that the disease developed by the petitioner is unconnected with his service. It is not a constitutional disease as now claimed by the authorities. The question also arises as to how the authorities decided whether a particular illness is a constitutional illness and an illness unconnected with the service.

11. Before we proceed, we may advert to Appendix II referred to in Regulation 173 of the Pension Regulations for the Army (referred to above). Appendix II referred to in Regulation 173, contains Entitlement Rules providing 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 military service and has been and remains aggravated thereby. This rule means, that a claimant 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 claimant 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. We will now advert to one other rule regarding awarding of the disability pension in respect of illness. The rule is Rule 7(b) which has been extracted above. According to this rule, if no entry is made regarding the particular illness at the time of claimants' acceptance into 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 the entry.

12. The aggregate effect of these rules is that a claimant is entitled to disability pension even if the disease be contracted prior to his acceptance into service but provided it aggravated due to stress and strain of the duties; that the benefit of reasonable doubt will be extended to the claimant if and when a claim is made and that every illness that led to the claimant's discharge will be deemed to have arisen in service, if it was not noted so at the time of the individual's acceptance in service. The underlining stress in these rules is clear; that a claimant be awarded the disability pension unless it is shown, for reasons to be stated in writing, that the disability was incurred prior to the entry into the service and that the defect or the disease could not have been detected by a medical examination prior to the entry into service.

13. If these parameters are applied to the instant case, it will be difficult to deny the benefit of reasonable doubt to the petitioner. That it is nobody's case that the petitioner did suffer the disease at the time of acceptance into service. He had no such ailment till 1972 when he developed the same. He was downgraded to Category CEE. He underwent treatment and he recovered and was upgraded to Category AYE in 1980. It means, he responded to the treatment and he recovered. Then again he led an active life till November, 1988. During this period he had served in all stations. Again he developed the illness and was downgraded to CEE Category in November/December, 1988. This means, the reason for the downgrading was the result of the active life he led. He might have had the illness till 1980. It was treated and he rejoined duty in Grade AYE. But subsequently, his illness or disability aggravated due to his service from 1980 to 1988 resulting in his being discharged from service due to the disability. The disability he thus suffered in 1988 and thereafter has, therefore, direct nexus with his service and the cause for the aggravation of the disease was his service

between 1980 and 1988.

14. From the wording of the rules, it is clear that it is intended to benefit the claimant and to help the claimant. Rule 4, referred to above, has to be given full play and, if so, the circumstance that the petitioner was treated for his illness and thereafter was upgraded to Category AYE in 1980 and further thereafter he was downgraded to Category CEE in 1988 does directly indicate that the downgrading was as a direct result of the stress and strain the petitioner suffered between 1980 and 1988 which aggravated the illness he had suffered previously for which he had been treated. Therefore, this clearly establishes that the aggravating of the illness has direct nexus with the military service being rendered by the petitioner.

15. Under Rule 7(b) of the Entitlement Rules, referred to above, it shall be presumed that any disease which led to an individual's discharge has arisen in service, if not noted at the time of his acceptance in service. This presumption is rebuttable if medical opinion, for reasons to be recorded, holds that this disease could not have been detected at the time of acceptance to the service. We may notice Rule 2(a) also in this behalf. It reads thus:

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".

It means, disablement shall be accepted as due to military service if the disease which existed aggravated due to military service. Hence, the combined effect of these rules is that unless the disease of the individual is noted at the time of acceptance of him into service, it will be deemed to have arisen due to the military service; and even if it existed, if it aggravated due to the military service resulting his invaliding, it can be a ground for claiming disability pension.

16. In this case, there is no medical opinion brought to the notice of the petitioner which declares that the disease could not have been detected as such. There cannot be a unilateral declaration in this behalf without hearing the petitioner or examining him. He has a right to be heard before they decide to take him outside the purview of Rule 7(b) referred to above. A reading of the Entitlement Rules discloses that it is intended to help the claimant rather than providing a reason to turn down the claim of an invalid claimant. This is evident from Rule 4 of the Entitlement Rules which reads as follows:

"4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases".

This rule embodies the intent of the rule makers and any interpretation which will take away its effect should be rejected. In this case, Annexure-F order is a cyclostyled proforma, with blank columns all over. It has been filled up by some one. It is not known whether this has been done on the basis of any medical opinion. As to how the Controller of Defence Accounts (Pension), Allahabad, came to the conclusion that the disability suffered by the petitioner during service in the Army is not attributable to military service is not also disclosed to the petitioner. The statement of objections does not also enlighten this aspect. One does not know whether medical opinion was availed of at all. The sheet of paper on which Annexure-F is written is the final verdict on the saga of hardship and difficulties that the petitioner suffered. It does not require any investigation to hold that there is no application of mind at all by the authorities while it dealt with the claim of the petitioner.

17. The petitioner appealed against the said order. Annexure-A is the appellate order. This affirms Annexure-F order. First of all, Annexure-F order suffers from the vice in that it does not spell out the basis for declining the request. It was not issued after hearing the affected person and it also does not disclose as to how the authorities came to that conclusion. It is hence an order not valid in law. The appellate order merely confirms the said order. A confirmation of an invalid order by the Appellate Authority will not render the original order valid. Thus, justice has not been meted out to the petitioner by either of the authorities.

18. That apart, the question involved in this case is a decision on a specialised nature which involves knowledge of medical science. The appeal is considered by the 1st respondent. But Annexure-A order refers to the consideration of the same by an Appellate Medical Authority. In the scheme of things there is no such authority who is entitled to examine the appeal preferred by the petitioner. If, as a matter of fact, the Appellate Authority wanted to rely on the opinion of the said authority, then it would amount to the Appellate Authority being influenced by the dictum of another authority and abdicating its power to "extra" appellate forum. Further in such cases, the petitioner is also entitled to be told as to what was the opinion of the said Appellate Medical Authority as well. He has a right to know the contents of the report as it may be a case where the very same Officer who had advised the rejection of the request for disability person may be a member of the Appellate Medical Authority. For all these reasons, I am inclined to hold that there has not been a proper disposal of the appeal by the appellate authority as well.

19. I do not think that in this case the matter need be remitted to the authorities for fresh disposal for the following reason:

The disease was not noted admittedly at the time of acceptance of the petitioner into military service. If so, it should be presumed to be a disease arisen while he was in service. The statement of objections gives the following factual details:

A Medical Board examined him at Military Hospital, Jammu, and he was

downgraded to CEE Category for six months from 24-4-1972. Again a Medical Board held at Military Hospital, CTC, Pune, examined him and upgraded him to AYE Category with effect from 29-6-1980. This means, the medical opinion was that he was fit to serve. He earned his promotion and he served thereafter. He fell ill again and was hospitalised and treated at various places. He was then placed in Medical Category CEE for six months from 14-12-1988 by a Medical Board held at Military Hospital, Shillong. Thereafterwards he did not recover and ultimately the invaliding Medical Board finally invalided him with effect from 7-6-1990. It can thus be seen that he was first examined by the Medical Board on 24-4-1972 which classified him into CEE Category. In other words, the Medical Board discovered him to suffer from certain disease which required to be treated. The next Medical Board met at Medical Hospital, CTC, Pune upgraded him to AYE Category with effect from 29-6-1980. It means, he became normal and fit to discharge his duties. In other words, his disease had been treated and he became fit to serve. As stated, he earned his promotion thereafter. The subsequent development of illness and the recommendation of the Medical Board held at Shillong to reclassify him into CEE Category can be only due to the aggravation of his illness subsequent to 29-6-1980 which can be only due to the stress and strain of his service. Even after the illness and his recovery therefrom, his services were extracted and he was called upon to serve from 29-6-1980. They did not consider it to be an illness necessitating his invaliding from service. It is after he served from 29-6-1980 to 14-12-1988 when the Medical Board again de-classified him to Category CEE and ultimately invaliding him from service. There can be no gainsay that the reason for the aggravation of the disease is only due to the stress and strain of the service he has undergone subsequent to 29-6-1980 till 14-12-1988. If so, clearly as contemplated under Rule 4 of the Entitlement Rules in Appendix II Pension Regulations, the benefit of reasonable doubt should be given to the petitioner. In such circumstances, the petitioner is entitled to disability pension. Annexures-A and F orders are quashed. There will, therefore, be a direction to respondents 1 and 2 to award to the petitioner the disability pension that he will be entitled to in accordance with law. Appropriate orders quantifying the amount in this behalf will be issued by the Competent Authority, the 2nd respondent herein, within a period of two months from today.