
(2006) 11 DEL CK 0216

In the Delhi High Court

Case No : Writ Petition (C) No. 2983 of 2005

Nb. Sub Om Parkash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Casualty Pensionary Awards Rules, 1982 — Rule 12

Constitution of India, 1950 — Article 226

Pension Regulations for Army, 1961 — Regulation 173, 185, 48

Citation : (2006) 11 DEL CK 0216

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : S.M. Dalal, for the Appellant; Preeti Dalal, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—In this petition under Article 226 of the Constitution of India, the petitioner prays for quashing of order dated 8th July, 2002 passed by respondent No. 4 and order dated 6th November, 2004 passed by respondent No. 3 rejecting the claim of the petitioner for grant of disability pension. He further prays that respondents be directed to grant and pay disability pension to the petitioner @30% with effect from 31st July, 2001deemed to be 50% in terms of Government of India Notification dated 31st January, 2001.

2. The necessary facts are that petitioner was enrolled in the Army as Sepoy on 29th July, 1975. Due to his hard work and dedication to duty he was promoted to the rank of Nb. Sub. On 2nd August, 1999, the petitioner was granted 7 days casual leave from 2nd August, 1999 to 8th August, 1999. This leave was extended up to 31st August, 1999 by his Commanding Officer. After expiry of said leave, the petitioner commenced his journey from his leave station for his unit on 31st August, 1999. He boarded Pooja Express Train from his nearest railway station for Jammu Tawi. As the train was approaching Delhi, there was severe jolt due to sudden breaking as a result of which the petitioner fell down

and his left leg got crushed between train and railway platform. Thereafter, the petitioner was taken and admitted to Base Hospital, Delhi Cantt by a fellow Passenger. The petitioner was transferred to Army Hospital R and R after two days where he was operated upon twice. His injury was diagnosed as ?Crush Injury (LT) Foot (OPTD) with comminuted Fracture 5th Metatarsal?. As a result of above, the petitioner was placed in low medical category CEE (temporary) w.e.f. 25th November, 1999 and later on placed in low medical category BEE (Permanent) w.e.f. 25th November, 2000. The Court of Inquiry was held. However, copy of the same was not given to the petitioner. The Release Medical Board was held in MH Ahmedabad in April, 2001, which assessed the disability of the petitioner at 30%. The petitioner was invalided out of service on 31st July, 2001. The petitioner claimed disability pension and made several representations to various authorities. However, he did not get any satisfactory reply. The petitioner then sent a petition through his counsel on 6th October, 2004 In reply to this petition, the respondents passed an order dated 6th November, 2004 and also annexed with it an extract of PCDA(P)'s order dated 8th July, 2002 wherein it was recorded that the injury suffered by the petitioner was not attributable to military service as the same was due to accidental injury at Railway Station as per injury report dated 1st September, 1999. The documents of the Medical Board were not furnished to the petitioner on the ground that they were confidential. The claim of the petitioner for grant of disability pension was declined. Before filing the present writ petition, the petitioner also served a notice through his counsel on 9th December, 2004 but of no avail. The respondents have filed detailed counter affidavit. The facts are not disputed. However, it is stated that in terms of judgment of Supreme Court in Ex Sapper Mohinder Singh v. Union of India (CA NO. 164/91 decided on 12th January, 1993) the findings of the Medical Board, which conducted the medical examination of the petitioner has to be given importance and the disability of the petitioner was described as under:

7...In the instant case, his disability ?CRUSH INJURY (LT) FOOT (OPTD) WITH COMMUNUTED 5TH METALARSEL? has been assessed neither attributable to nor aggravated by military service hence his disability pension claim has been rejected by the PCDA (P) Allahabad.

3. It is the contention of the respondents that the claim of the petitioner was prepared and submitted to PCDA(P) Allahabad, which rejected the claim of the petitioner on the ground that injury was not attributable to or aggravated by military service. It is also stated that order of rejection was given to the petitioner and he was required to file an appeal within 6 months from 8th July, 2002. However, no such appeal was filed and the rejection communicated to the petitioner has attained finality. The Opinion of the Release Medical Board as well as Commanding Officer was that the injuries sustained by the petitioner were not attributable to military service.

4. It is clear from the above narrated facts that the petitioner had served the

army without any medical problem and had proceeded on casual leave. When he was returning to his unit after availing casual leave, he met with an accident at Delhi and was admitted in Base Hospital, Delhi Cantt. The proceedings of the Medical Board, which met on 31st March, 2001, copies of which have been annexed to the counter affidavit, clearly shows that it was a case of ?CRUSH INJURY (LT) FOOT (OPTD) WITH COMMINUTED 5TH METALARSEL? and the petitioner was held to be not fit for further retention. It was also noticed that due to accidental injury, it was not attributable to service. The disability of the petitioner was found to be 30%.

5. The Court of Inquiry conducted by respondent was of the opinion that the petitioner had suffered an injury on his left foot accidentally while returning from his leave station to unit by train via Delhi. It was also stated that individual should not be blamed for the incident. 6. Learned Counsel appearing for the petitioner has relied upon the judgment of the Supreme Court in case of Joginder Singh (Lance Dafadar) v. Union of India and Ors.(1995) 30 ATC 637 wherein the Court held as under:

4. Although the appellant was given Army Pension but he was denied disability pension under the Pension Regulations. The disability pension was denied to the appellant on the ground that the injury was not attributable to military service. The appellant challenged the denial of disability pension by way of a writ petition before the Punjab and Haryana High Court. The High Court dismissed the petition in liming on the ground of delay.

5. The question for our consideration is whether the appellant is entitled to the disability pension. We agree with the contention of Mr. B. Kanta Rao, learned Counsel for the appellant that the appellant being in regular Army there is no reason why he should not be treated as on duty when he was on casual leave. No Army Regulation or Rule has been brought to our notice to show that the appellant is not entitled to disability pension. It is rather not disputed that an army personnel on casual leave is treated to be on duty. We see no justification whatsoever in denying the disability pension to the appellant.

6. We, Therefore, set aside the order of the High Court dated 15-12-1992. The disability of the appellant has already been adjudged by the respondents as 60%. We direct the respondents to grant disability pension to the appellant from the date when he was discharged from Army treating him to have incurred 60% disability. The respondents shall finalise the disability pension case of the appellant within three months from the receipt of this order. The appellant shall be further paid all the arrears of the pension within a further period of three months thereafter. In case the arrears of disability pension are not paid to the appellant within the period of six months from the receipt of this order, then the appellant shall be entitled to 12% interest from the date on the amount due.

7. Counsel for the petitioner has also relied upon the judgment of Division Bench of this Court in the case of Banso Devi v. Union of India (LPA No. 226/2001

decided on 24.9.2001) 2002 (1) F.L.J. 582 wherein the Division Bench after taking into consideration various judgments of the Supreme Court held that where disabilities were sustained by the army personnel while they were on casual leave, they were to be considered 'on duty'. In that case, the Court held that appellant would be entitled to special family pension in accordance with rules since the husband of the petitioner therein met with the accident which took place while attending to office in discharge of his duties.

8. In light of the aforesaid judgments and cumulative effect of Rule 12(d) of Entitlement Rules for Casualty Pensionary Awards, 1982, which is in Appendix II Regulations 48, 173 and 185 of Pension Regulations for the Army, 1961 and Rule 10 of the Leave Rules for Army dealing with the matter of casual leave, it is clear that a person, who suffered an injury while on casual leave and was returning from his leave station to his unit was said to be attributable to service. Under Rule 12(d) it is stipulated that when a person is proceeding from leave station or returning to duty from his leave station, provided entire travel will be on public expense, the injuries suffered during such travel would be as if the same having been suffered by a person while on duty. Once a member of the army, subject to the aforesaid rules, suffers an injury then such injury would be deemed to have been attributable to and aggravated by military service. No fault was attributable to the petitioner as he was not doing any act or deed which was not expected of a member of the force while traveling. Reference can also be made to the recent judgment of this Court in the case of Mr. Jitender Kumar v. Chief of Army Staff and Ors. (WP(C) No. 19839/2005 decided on 19th October, 2006) wherein this Court had discussed in great detail the concept of attributability and/or aggravation in regard to the injury/diseases suffered by the member of the Force while on leave.

9. For the reasons afore-recorded, we find that the impugned order passed by the respondents is arbitrary and is contrary to the settled principles of law.

10. Consequently, we set aside the impugned orders dated 8th July, 2002 passed by respondent No. 4. and 6th November, 2004 passed by respondent No. 3 and allow this petition by directing the respondents to consider and grant disability pension to the petitioner with 30% disability, which would be read as 50% as per Circular/Notification of the Government of India and as has been held in the recent judgment of this Court in the case of Ex.Hav. Surat Singh No. 6879628 v. UOI and Ors. WP(C) No. 8364/2006, decided on 27.7.2006. and in accordance with rules. The petitioner, however, would not be entitled to any amount in excess of 3 years immediately preceding to the date of filing of the present petition.