

(1995) 12 KAR CK 0057
In the Karnataka High Court

N.M. Venkata Reddy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-12-1995

Acts Referred:

Citation : (1997) 2 ACC 204

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Judgement

M.F. Saldanha, J.—The petitioner in this case has raised an interesting contention that despite his having put in hardly 103 days in the aggregate with the Air Force, that he should be awarded a disability pension on the ground that he was discharged from service because of such a permanent disability. The respondents have seriously contested his claim and it is therefore necessary to briefly recount the relevant facts. The petitioner was recruited as an Airman with the Indian Air Force and completed the formalities and joined his duties in the month of May, 1978. His case is that there are rigorous medical tests that one is required to undergo before enrolment to such a post in the armed forces and that he completed all the requisite formalities at the end of which having been found fit, he was directed to join his training. According to the petitioner, as a result of various jobs assigned to him, he suffered a permanent disability to his left ear and that starting from the following month onwards that he was required to undergo various medical check-ups which confirmed the fact that he had totally lost his hearing in his left ear. Since he is handicapped and disqualified from service with the Air Force, he was discharged in September, 1978. The petitioner contends that the disability arose in the course of his duties or training as the case may be and that therefore he is entitled to claim disability pension. He further contends that he had been representing to the various authorities and that they had not granted him the pension, that he had claimed which is why finally, in the year 1993, he has filed the present petition.

2. It is necessary for me to record the defence pleaded by the respondents. In

the first instance they contend that the petitioner was recruited and that he was in the initial stages of training when he was required to undergo what is known as a re-medical examination. According to the respondents, this examination was done a few weeks after he was recruited and that this examination indicated that he suffered from a serious hearing defect in his left ear. He was thereafter sent to various specialists, medical centres and finally, a certificate came to be issued on 12.8.1978 by the classified specialist, E.N.T. Command Hospital, Air Force, Bangalore, indicating that the disability was permanent and that he is considered unfit for training in the Air Force which was why he came to be discharged from service. According to the respondents, the certificate in question indicates that the disability was "neither attributable nor was aggravated". To my mind, this certificate is totally and completely unsatisfactory and indicative of the cavalier manner in which the case has been dealt with in a serious matter affecting the entire life and career of the petitioner. One would have expected the authorities concerned to act with atleast a medium of responsibility which is totally and completely missing in this case. The learned Advocate who represents the respondents has undoubtedly done his very best to defend these officers by stating that the Court should read into the certificate into fact that the disability is neither attributable to the duties assigned or task performed by the petitioner after the date of his recruitment nor was it aggravated by any of these factors. For purposes of argument, I am prepared to accept the request made by the learned Advocate and to assume that this is what doctors have sought to indicate in the certificate. It is on the basis of this certificate basically that the respondents contend that the petitioner is not entitled to any disability pension. The added argument is that admittedly the petitioner was with the Air Force for hardly 3th months and it is contended that it is basically impossible that such a disability have occurred during such a short period the majority of which time was spent by him being sent from one specialist to the other and the contention therefore adopted is that unless it can be conclusively demonstrated that the disability is attributable to anything that took place in the course of his service duties or functions, that he would be disqualified from claiming disability pension. In this regard, reliance is placed on Rule 153 which very clearly specifies that a disability pension may be granted to an individual who has invalidated from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over. The subsidiary contention taken up on behalf of the respondents is that the certificate-R2 has stated that the disability was of the level of 11 to 14%, that this being below 20% that the petitioner is not entitled to any disability pension.

3. The principal contention raised on behalf of the petitioner is that admittedly he had undergone all the requisite checks including a thorough medical examination at the stage when he was recruited. Petitioner's learned Advocate states that even though the respondents have produced various records, that they have not produced tine records relating to the medical examination done on him at the point of time when he was recruited. Apart from this, what the petitioner's

learned Advocate basically submits is that unless the petitioner was found hundred percent physically fit at that point of time that he could not have reached the second stage namely that he would not have been recruited and that he could not have commenced his training. Learned Advocate submits that if an injury or disability has occurred for any reason at any point of time thereafter, that it can only be attributed to something that happened in the course of his training and that, therefore, the petitioner clearly qualifies. The learned Advocate has assailed the correctness of the certificate-R2 because he submits that the earlier part of the certificate indicates that the petitioner has suffered a permanent disability and that he is totally unfit to even continue with his training. The submission is that the disability was serious enough to result in the petitioner's discharge from the Air Force and that the subsequent part of the certificate namely that the disability is only of the order of 11 to 14% is required to be discarded. He also assails the part of the certificate which states that the disability is neither attributable nor aggravated by Air Force duties and he contends that in the first instance, the respondents have not been able to substantiate as to how this conclusion has been arrived at.

4. The petitioner's learned Advocate has placed very heavy reliance on the reply sent to the petitioner's Advocate on behalf of the Commanding Officer, M.T.T.I., Air Force, Madras, in response to notice dated 24th January, 1991 wherein the following statement appears: "While undergoing abinitio training, Ex-662048-S AC (U/T) Venkata Reddy had developed with severe ear problem and was diagnosed as "Deafness left ear perceptive". Learned Advocate submits that this is a clear and unequivocal admission on the part of the Air Force authorities that this ailment or handicap had occurred in the course of the training. He submits that this statement directly contradicts the certificate-R2 that is now produced and it is his contention that the respondents are fully and completely bound by this admission.

5. On behalf of the respondents, apart from reiterating what had been indicated by me above in support of their defence, learned Advocate raised a preliminary objection with regard to the maintainability of the petition. He stated that admittedly the petitioner had been discharged from service in September 1978 and that he has filed the petition before this Court after a delay of 15 years. He relies on the well known maxim that a writ remedy is totally barred if the petitioner has not availed of the remedy expeditiously and in those of the cases where there is a delay, that there must be satisfactory explanation for it. He points out to the Court that the petitioner's learned Advocate exchanged some correspondence with the authorities in the year 1991-1992 and that thereafter filed the present petition but the opinion is that even if this period were to be excluded that there is still a delay of 13 years. He also submits that this delay is hardly explained. On the other hand, the petitioner's learned Advocate contends that his client was requesting various authorities at different levels to consider his case sympathetically and when nothing happened, that as a last resort he finally requested his Advocates to address a notice to the Air Force authorities.

He also annexed to the petitioner a copy of his earlier representation and the contention is that since the petitioner was all along hopeful that at some stage the authorities would look into his case give him justice that this Court could not hold the delay against him.

6. I do concede that the explanation in this case is considerably weak. Normally, I would have straightaway dismissed this petition on the ground of delay, but on an overall appraisal of the record I do find that the petitioner was a young man who was summarily discharged from the Air Force and even though there is no conclusive evidence before me that he was representing his case and trying to seek his disability pension, one must assume from the material produced that he was doing this because even as late as in the year 1991-1992 he has seriously taken up the matter. Had this not been so, there was no occasion for the petitioner after that long lapse of time to have suddenly taken up the matter (sic). It is therefore clear to me that even though he should have produced better material for the intervening period that the statement that he was trying and representing will have to be accepted. The other aspect of the matter is that the petitioner is left with no remedy other than the present one. The petition was admitted in the year 1993 and for the first time when the matter has come up for final hearing, the objection with regard to the aspect of delay has been canvassed and it would be extremely harsh to my mind at this stage to refuse to consider the case on merits on the basis of this technicality. The requirement to do basic justice is predominant consideration and having regard to that principle, this Court will have to make a considerable allowance even in the present petition and decide it on merits.

7. As far as the merits of the matter are concerned, respondents learned Advocate submits that the onus of establishing that the disability had occurred in the course of the petitioner's duties after the point of recruitment lies heavily on the petitioner. He states that the petitioner ought to have set out very clearly as to what precisely were the functions that were assigned to him, whether any accident had taken place or whether he was exposed to such conditions and hazards as were serious enough to have destroyed his hearing in the left ear. He submits that the petitioner has fallen short of establishing these requisite ingredients and in the absence thereof, that he cannot maintain the present claim. The second limb of the argument is that the respondents have produced three medical certificates issued by different authorities prior to his discharge in all of which it is recorded that he was suffering from permanent deafness of the left ear. Learned Advocate submits that having regard to the time factor in this case, that it is very clear that this was an inherent basic defect in the petitioner which was detected only after he commenced his training and that it had absolutely nothing to do with anything that took place after the date of his recruitment. The last submission is that the doctors who have certified the petitioner are competent and highly qualified medical personnel and that therefore the Court must accept the certificate issued by them and act on these and that the petitioner has not made out any ground on which these certificates

can be called into question. As regards the admission that I have referred to earlier is concerned which to my mind is very crucial, the respondents learned Advocate submits that this sentence cannot override the medical evidence which the respondents have produced and it is his submission that at the highest, it will have to be put down to (sic) draughtsman ship but this cannot confer any right to the petitioner.

8. The controversy before me is within a very narrow ambit and the question is as to whether on the basis of the material produced before the Court, the petitioner's claim is justified. As far as this aspect of the matter is concerned, I have carefully scrutinised the certificates issued by the various medical personnel attached to the Air Force who unequivocally state that the petitioner was found suffering from permanent deafness of his left ear which was characterised as making him unfit either for future training or retention with the Air Force. It is true that in one of the certificates, an attempt has been made to state that this condition was neither attributable to service functions nor was it aggravated by any of these. Normally, this statement could have been accepted by the Court except for the fact that there is a clear cut admission on behalf of the Air Force that this condition had occurred in the course of the petitioner's initial training. This is an unambiguous admission and to my mind is a correct one. From the manner in which the certificate-R2 has been issued and the wording thereof, I have no hesitation in holding that it was issued in an absolutely casual manner and that, therefore, this Court cannot place reliance on it. The additional reason for it is that the time factor in this case is extremely short and it was hardly a few weeks after the petitioner was recruited, that the defect was noticed. Two things emerge from this situation, the first of them being that had the medical authorities done a thorough examination of the petitioner and had they certified that the defect was an old one or that it was a congenital defect namely one from which the petitioner all along suffered, then the possibility or the probability of this disability having occurred in the course of his training could have been ruled out. This however is not the position for one very important reason that unlike in commercial -organisations or for that matter even in the public sector, as far as the armed forces " are concerned physical fitness is one of the basic and most important attributes and it is an accepted position that every one is required to undergo a rigorous and thorough medical examination prior to being recruited and sent for training. The petitioner has undergone such an examination and it will have to be assumed that unless he was hundred per cent fit that he could not have even been recruited in the Air Force. I go to the extent of adding that since he was recruited to the Air Force that it must also be assumed that the Medical Board which examined him would have paid special attention to two aspects namely perfect sight and perfect hearing. In the light of this background, the position that emerges is that the petitioner must have been one hundred per cent fit even as far as hearing is concerned, at the point of recruitment and it was a few weeks thereafter, that he was disqualified as being medically unfit. In this background, it would be impossible to accept the defence of the respondents

that this disability occurred due to any factor other than something in the course of his training. There is nothing on record to indicate that the petitioner was subjected to any outside factors which could have resulted in this disability. To my mind therefore, the petitioner has succeeded in establishing to the complete satisfaction of this Court that the disability did occur in the course of his initial training. I have also observed that having regard to the wording and the manner in which certificate-R2 has been issued, that I am not inclined to accept the statement contained in that certificate that the disability was only of the order of 11 to 14% when the certificate itself elaborately states that the petitioner was totally unfit to even continue his training or to be retained in the Air Force. Having regard to this situation, the respondents were clearly wrong in having disqualified the petitioner from his rightful entitlement of disability pension.

9. There is however one aspect of the matter which I need to record here. As a necessary consequence of the findings recorded by this Court, the petitioner would be entitled to receive the disability pension on and from the date when he was discharged from service namely September 1978. However, in the light of the objection raised by the respondents and the fact that the explanation for the delay in approaching this Court is extremely weak, even though the petitioner is entitled to succeed, it is necessary for me to specify that he will be entitled to receive the pension only from the date of which the present petition was filed. This is a necessary consequence because this Court has made a special concession in entertaining the petition despite the delay, but the petitioner cannot be allowed to get away with completely. It is also necessary to specify that the petitioner shall be entitled to produce independent evidence from competent medical specialists in support of his case that the disability was of the order of either 20% or higher K than that. The petitioner shall produce such material before the Air Force authorities within a period of two months from today and if the material so indicates that the disability was of a particular percentage, the same shall have to be certified also by a medical practitioner of the rank of Civil Surgeon apart from the other specialists to whom the petitioner may go.

10. The petition accordingly succeeds. The respondents are directed to examine the material which the petitioner may produce in support of his claim that the disability was higher than what had been certified in the year 1978. If the material is satisfactory, the disability pension shall be granted on that basis, but if the petitioner fails to produce such material then in keeping with the rules, he shall be entitled only to the minimum pension that the certified disability would entitle to him. The respondents shall compute and pay to the petitioner the arrears of pension computed from the date on which this petition was filed up to the date on which the payment is made latest by 30th June, 1996. Thereafter, the pension shall be paid to him in keeping with the rules and regulations.

11. The petition stands disposed of. On the facts of the present case, there shall be no order as to costs.