

(2001) 01 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 3839 of 1999

Parshu Ram Majumdar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 GLT 128

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : B. Chetri, for the Appellant; D. Sur, Addl. CGSC., for the Respondent

Judgement

A.K. Patnaik, J.—Heard Mr. B. Chetri, learned Counsel for the Petitioner, and Mr. D. Sur, learned Additional Central Government Standing Counsel.

2. The Petitioner joined the Army under ASC (MT) Unit as Sepoy rank on 23.2.1979. After he had put in several years of service, he was admitted to Hospital on 24.10.1987, and discharged from Hospital on 18.2.1988. The discharge slip of the Hospital annexed to the writ petition as Annexure-B indicates that he was diagnosed of suffering from Schizophrenia. Thereafter, he was discharged from service on medical ground. The Petitioner thereafter applied for disability pension, but the application of the Petitioner for such pension was turned down by the CDA (Pension), Allahabad on 27.12.1988. The Petitioner then preferred an appeal, but the said appeal was also rejected by the Ministry of Defence, Government of India as indicated in the communication dated 8.5.1997 of the Major, Senior Record Officer, Bangalore. Aggrieved, the Petitioner submitted a memorandum to the President of India, but no order has however been communicated to the Petitioner on the said memorandum to the President of India. Instead, the President's Secretariat referred the memorandum of the Petitioner to the Ministry of Defence, Government of India. Aggrieved, the Petitioner has filed this writ petition under Article 226 of the Constitution for a direction on the Respondents to release the disability/family pension to the

Petitioner with all other service benefits on account of his discharge from service on medical ground on 19.2.1988.

3. An affidavit-in-opposition has been filed on behalf of the Respondents, and in paragraph-6 of the said affidavit-in-opposition, the reason why the Petitioner was not granted disability pension is indicated as follows:

That with regard to para-5, the humble deponent begs to state that in terms of para-173 of Pension Regulation for the Army, 1961, Part-I, primary conditions for grant of disability pension is that unless otherwise specifically provided a disability pension may be granted to an individual who is invalided out of service on account of disability which is either attributable to or aggravated by military service and assessed at 20% or above. In the instant case, the disability of the Petitioner was accepted as neither attributable to nor aggravated by military service. Hence, the Petitioner is not entitled to disability pension as per rules in vogue....

A reading of the said pension indicated in para-6 of the affidavit-in-opposition filed on behalf of the Respondents for not granting disability pension to the Petitioner was that the Petitioner was not invalided out of service on account of disability which was attributable to or aggravated by military service and assessed at 20% or above. In the aforesaid reason as stated in para-6 of the affidavit-in-opposition, para-173 of the Pension Regulation for the Army has been relied upon. Para-173 of the said Pension Regulation for the Army is quoted hereinbelow:

Primary conditions for the grant of disability pension.

173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable or aggravated by military service and is assessed at 20 percent or over.

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

It will be clear from the aforesaid para-173 of the Pension Regulation for the Army that disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over. The Petitioner was invalided from service on account of Schizophrenia. As to whether such Schizophrenia suffered by the Petitioner was attributable to or aggravated by military service can only be opined by the Medical Experts. Further, as to whether such disability on account of Schizophrenia can be assessed at 20% or above can only be opined by Medical Experts. In para-6 of the affidavit-in-opposition filed on behalf of the Respondents, no indication whatsoever has been given that opinion of the Medical Experts was taken on the aforesaid two aspects.

4. Mr. Sur, learned Addl. Central Government Standing Counsel, appearing for

the Respondents, submitted that in para-12 of the said affidavit-in-opposition, it has been stated that the Petitioner was brought before the Invaliding Medical Board held at 151 Base Hospital on 3.2.1988 which was approved by ADMS HQ 101 Area on 10.2.1988. But the said Medical Board appears to have given its opinion that the Petitioner should be invalided from service, and nothing has been indicated in the said para-12 of the affidavit-in-opposition that the Medical Board has opined that Schizophrenia which the Petitioner was suffering was not attributable to or aggravated by military service or was not assessed at 20% or over as indicated in para-173 of the Pension Regulation for the Army.

5. Mr. Chetri, learned Counsel appearing for the Petitioner, vehemently submitted that at the time of entry of the Petitioner into military service no such Schizophrenia in the Petitioner was detected and, therefore, it is to be presumed that the Petitioner had suffered Schizophrenia only after entry into military service and on account of military service. He cited the decision of this Court in *Ghanashyam Sharma v. Union of India* 1997 (3) GLT 508, in which it was held that in the absence of medical report to show that the disease was a constitutional disability, the authority could not decide or come to a finding that the particular disease was a constitutional disability. He further contended that in the said decision of this Court, it was held that the Petitioner in that case had been arbitrarily, capriciously and whimsically deprived of disability pension, and a direction was given to the authorities to give the Petitioner disability pension with arrears. According to Mr. Sur, however, Schizophrenia is a constitutional disability. As indicated above, these are matters not for the court to decide, but for the experts to opine. But the Petitioner has been denied disability pension without taking any opinion of Medical Experts.

6. For the aforesaid reasons, I quash the orders of the CDA (Pension), Allahabad, Respondent No. 3, and the order of the Ministry of Defence, Government of India in appeal denying disability pension to the Petitioner, and direct that Respondent No. 3, CDA (Pension), Allahabad, will refer the case of the Petitioner for disability pension to a Medical Board on the aspects mentioned in this judgment and other relevant aspects and on the basis of the opinion so given by the Medical Board take a fresh decision on the claim of the Petitioner for disability pension in accordance with para-173 read with Appendix-II of the Pension Regulation for the Army within three months from the date of receipt of a certified copy of this order from the Petitioner by the said CDA (Pension). In case the Petitioner is still aggrieved by the order that is passed by the CDA (Pension), it will be open for him to either prefer an appeal or to move this Court for appropriate relief.