

(1995) 08 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Appeal No. 891 of 1994

Phul Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-08-1995

Acts Referred:

Army Rules, 1954 — Rule 11(3)

Citation : (1996) ILR Delhi 580

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : V.P. Sharma and K.C. Mittal, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioner an ex-gunner has filed this writ petition on 14-2-1994 seeking a direction to the respondents to release the disability pension to the petitioner w.e.f. 11-8-71 and quashing the impugned order dated 18-8-1990 (Annexure-PU) whereby the petitioner's claim for disability pension was rejected.

(2) It is not disputed that ex-gunner Phul Singh (1181704) was enrolled in the Regiment of Artillery on 19-12-62 and was recommended the invalidment out of service w.e.f. 10-8-71 due to invaliding disability Neurosis (300). This was done under Rule 13(3) Item No. III(iii) of Army Rules 1954 by a duly constituted Invaliding Medical Board arranged for him at Command Hospital (Central Command) Lucknow. No family pension was released or sanctioned to the petitioner.

(3) Vide letter dated 9-10-71, the petitioner was informed of his claim for disability pension having been rejected. The Communication (Annexure P-2) clearly stated :

"DISABILITYPENSION Rejection Of After a careful consideration of your case it has been intimated by the Cda (P) Allahabad that the disability which resulted in

your invalidment : (i) is not attributable to Military service; (ii) does not fulfill the following conditions, namely that it existed before or arose during Military service and has been or remains aggravated thereby. 2. No disability pension is, Therefore, admissible to you under the existing rules. 3. A sum of Rs. 1161.55 (Rs. one thousand one hundred sixty, one and paise fifty five only) has been sanctioned to you as invaliding gratuity. The same is being remitted to you by Money order in due course. 4. A sum of Rs. 669.30 (including Mo commission) has also been sanctioned to you, as Dcr GTY. The same is being remitted to you by Mo in due course."

(4) Thus, in the year 1971 itself the petitioner accepted the amount of invaliding gratuity fully aware and conscious of the fact that his claim for disability pension was not acceptable, tie appears to have preferred belated petition on 31-7-75 in response to which he was informed vide letter dated 13-8-75 (Annexure P/4):

"REFERENCE your petition dt. 31-7-75. 2. You have already been informed vide this office letter of even No. dated 9th October 1971 that your Disability which resulted in your invalidment had been viewed as neither attributable to not aggravated by Military service by the Cda (P). You are not entitled to any disability pension under the existing rules. 3. However you have been remitted Rs. 1161.55 on account of invaliding fatuity and Rs. 669.30 as amount of Dcr gratuity and the same has already been received by you during October, 1971."

(5) Thereafter the petitioner observed silence for around 12 years. In the year 1986-87 he appears to have preferred a few petitions and made a few reminders pressing his claim for the release of disability pension. Once again, on 18-8-90 vide Annexure P/I he was informed of his claim having been repeatedly rejected earlier. He was also advised to avoid further representation on the subject as they were not going to serve any useful purpose. After a lapse of 3-112 years the present petition has been filed on 14-2-1994.

(6) According to the respondents, as per Regulation No. 173 of the Pension Regulations for the Army, 1961, Part I, disability pension is granted to an individual provided his disability is viewed as either attributable to or aggravated by the military service and the percentage of disablement is assessed at 20 per cent or above by the competent pension sanctioning authorities. As the invalidity suffered by the petitioner was neither attributable to nor aggravated by the military service, his claim for disability pension was declined. However, by virtue of his eight years and 234 days qualifying service he was paid Rs. 1161.55 on account of invaliding gratuity and Rs. 669.20 on account of Dcr gratuity.

(7) We have perused the original service record of the petitioner made available to us by the respondents. The petitioner having been found to be a case of Neurosis, diagnosed by army doctors, who had also formed an opinion that the petitioner did not deserves to be continued in army service, he was recommended to be brought before the Invaliding Medical Board. He was found to be a case of disability as he was suffering from Neurosis (300). The board had

also opined that the petitioner's disability had resulted from personality traits acquired in early life. The Medical Board has further opined that the disease was not attributable to service nor was aggravated during service. Record also shows that the petitioner was not able to stand the stress or strain of performing the duty of a driver.

(8) BUTTERWORTH'S Medical Dictionary (2nd Edn. page 1154) defines Neurosis "as an illness of the personality manifested as a functional derangement of mind or body and differentiated in typical instances from psychosis by the retention of insight and by its less serious and less fundamental nature." The learned counsel for the petitioner placed reliance on *Suresh Singh vs. Uoi* 1994(2) Aislj 32(1) to contend that unless and until the disease was noted as existing on the date of enrollment in the army, it will be presumed that the disease was attributable to service. For this purpose the learned counsel also relied on Rule 7B which has been quoted in para 5 of the judgment in *Suresh Singh's case* (supra) which reads as under:

"RULE7(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 tune 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."

(9) So is the view taken by a learned single judge of this Court in *Ex. Cdt. Subash Chander vs. Uoi* 1995 T Ad Del 1305(2).

(10) In the case at hand it is clear that the petitioner was found to be suffering from Neurosis which as per the opinion of the Invaliding Medical Board was attributable to personality traits acquired by the petitioner in early life. The symptoms could not have been detected ?t the time of entry in the service unless disclosed by the petitioner himself. The ordinary rule relied on by the petitioner is Therefore of no assistance to him. We may extract and reproduce the summary of the petitioners case prepared by D. S. Goel. Captain Amc on 3-5-71 while advising the constitution of invaliding medical board :

OPINION and recommendation of the. psychiatrist (Capt D, S. Goel AMC) Dated 20-4-1971, This 26 years old Or with 9 years of service is a long standing case of neurosis (ICO-300) who has had a variety of somatic symptoms pertaining mainly to cardio-respiratory systems ever since 1966. While no organic basis could be detected for these symptoms, psychiatric observation and investigations revealed a neurotically constricted personality with a weak ego and poor impulse control, constantly preoccupied, with domestic problems, gloomy and disheartened and poorly motivated for service. He had psychiatric treatment in 1969-70 and has been in med category Cee since January 70 without any improvement. His response to treatment (drugs and psychotherapy) at this centre has also been unsatisfactory, though his AFMSF-10 report is satisfactory

and recommended retention. In this view of the matter, Therefore, I consider this individual unfit for further military service and recommend invalidment in medical category Fee (E)."

(11) In a Db decision in Cw 4213/93 dated 4-10-93 (copy filed by the respondent as (Annexure R-1) the petitioner therein was denied disability pension as he had suffered from some constitutional disease. The petitioner had urged that he had developed this disease during service. The Division Bench held that this was a question of fact the correctness of which could not be agitated in the petition,

(12) We cannot resist observing that ordinarily in cases relating to claim for pension it has not been the practice of this Court to dismiss the petition summarily on the ground of delay. But the question of delay and laches has assumed significance in the present petition. The petitioner was discharged on 10-8-71 and was told on 9-10-1971 of his non-entitlement to disability pension. He could have preferred an appeal which he did not. For several spells of four years between 1971 1975, 1975 86 and 1987 90 then petitioner observed complete silence and he preferred this " petition belatedly in 1994. If the petitioner would have acted promptly by filing an appeal or by filing a writ petition, medical opinion could have been promptly sought for by directing the petitioner to be subjected to requisite medical examination to find out if the disease was attributable to military service or not. That opportunity has been lost to the petitioner on account of his own conduct Constituting delay and laches. Today, after a lapse of 24 years it would be practically impossible to find out if the disease" which invalidated the petitioner from military service in 1971, was acquired by him during service or was attributable to or aggravated by military" service or not.

(13) For the above reasons the petition is dismissed with no order as to costs.