
(2005) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 601 Of 2003

Prem Chand, Ex-Sepoy

APPELLANT

Vs

Union of India & Others

RESPONDENT

Date of Decision : 07-06-2005

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173, 173A

Citation : (2005) JKJ 650 Supp

Hon'ble Judges : S.K.Gupta, J

Bench : Single Bench

Advocate : V.K.Magoo, R.K.Gupta, Advocates appearing for the Parties

Judgement

1. The petitioner has filed this writ petition challenging the rejection of his case for grant of disability pension by the respondents on the ground that

his disability has been held less than 20%, disentitling the petitioner disability pension by the Sanctioning Authority i.e. PCDA(P) Allahabad based

on the opinion of the Medical Advisor obtained in this behalf.

2. According to the petitioner, he joined the Indian Army in the year 1957 as Sepoy in AMC Corps. After serving more than 9 years, he was sent

to the Reserve in the year 1966. On the completion of 15 years of Combined Colour and Reserve Service, service pension was granted to the

petitioner. The petitioner was reenrolled in Defence Security Corps, on 25.07.1977 and on the completion of its term of engagement, stood

transferred to Pension Establishment w.e.f. 01.08.1992. The petitioner further stated to have been boarded out from the army in the year 1992 on

medical grounds having contracted a disease called as 'Essential Hyper Tension and Prolapse Disc' conducted by the Medical Board. It is stated

that his disability was assessed at 20% to 40% on account of the said disease. The petitioner was granted disability pension vide order dated 18.01.1993 by the CCDA (P) Allahabad w.e.f. 01.08.1992 to 26.12.1996. The examination of the petitioner was again conducted by the fresh Medical Board in the year 1996 and disability more than 20% was assessed. There was again reassessment of the disability pension claim of the petitioner by the Chief Controller of Defence Accounts (Pensions) Allahabad, and gave it less than 20% for 5 years and thereby disentitled him to get disability pension from 27.04.1997 to 26.04.2002 on 16.12.1997. Further case of the petitioner is that even though the petitioner's disability was assessed more than 20% by the Medical Board from the year 1992 to 1997 but despite clear orders, he was not granted disability pension. It is also stated in the petition that vide order dated 25.09.2001, it was directed that all disability pensioners are required to appear before the Medical Board for one time reassessment instead of having periodical board to assess disability, so that their disability pension can be reassessed for life. In pursuance of the aforesaid letter, the petitioner also appeared for reassessment of his disability. The petitioner further stated to have been examined by the Medical Board and the composite percentage of disability was assessed at 20% vide letter dated 13.11.2001, but yet has not been paid disability pension and instead communicated vide letter dated 04.03.2002, that his entitlement for disability pension again has been rejected on the ground that it is less than 20% (11% to 14%). The petitioner is aggrieved of rejection of his entitlement to disability pension merely on the reassessment of his disability on the basis of documents alone and without examining the petitioner by the PCDA(P) Allahabad, which is illegal and arbitrary and its correctness is assailed in this writ petition being not legally sustainable, seeking its quashment and further a direction from the Court to the Sanctioning Authority to grant disability pension to the petitioner.

3. In the reply filed by the respondents, it is submitted that the petitioner was placed in low medical category and produced before the Release

Medical Board at 167 Military Hospital C/O 56 APO on 27.12.1991. The Medical Board recommended him to be released in medical category

BEE (Permanent) due to disabilities; (i) ESSENTIAL HYPERTENSION 401 assessed at 30% for two years; and (ii) PROLAPSE IV DISC L5

SI 722 V67 assessed at 20% for two years (Composite assessment of all disabilities is 50%) which was approved by the competent authority on

31.01.1992. Disability pension claim of the petitioner as usual was submitted to the competent pension sanctioning authority i.e. Principal

Controller of Defence Accounts (Pensions) Allahabad and the same was accepted and the disability pension was allowed but, however, again the

claim of the petitioner for payment of disability pension was reassessed and it was discontinued w.e.f. 27.04.1997 as it was reassessed less than

20% for 5 years w.e.f. 27.04.1997 to 26.04.2002 by the competent pension sanctioning authority i.e. PCD(Pension) Allahabad in consultation

with their Medical Advisor. The petitioner's disability claim was again reassessed and reviewed by the Pension Sanctioning Authority and has been

decided and reassessed at less than 20% (11% to 14%) and intimated the petitioner about his disentitlement against the existing rules vide Defence

Security Corps Letter dated 04.03.2002. According to the respondents, an individual who has been invalidated from the service on account of

disability, his disability pension has been discontinued w.e.f. 27.04.1997 after having been reassessed at less than 20% by the sanctioning authority

on the opinion of their Medical Advisor. The petitioner is, therefore, not entitled to disability pension within the purview of Rule 173, governing the

field.

4. The matter is considered on the basis of material available on the record and submissions advanced by learned counsel for the parties.

5. Indubitably, the grant of disability pension to army personnel is governed by the Army Pension Regulations, 1961, which inter alia, provide for

grant of disability pension to an individual who is invalidated from service on account of disability which is attributable to or aggravated by the

military service and is assessed at 20 percent or more, the question whether such disability was attributable to or aggravated by the military service

was to be decided in accordance with Rule 7(b) of Appendix II which lays down that a disease which had led to an individual's discharge or death

will ordinarily be deemed to have arisen in service, if no note was made of it at the time of individual's acceptance for military service. However, if

the medical opinion holds that the disease was such which could not have been detected on medical examination, on entry into service, such

disease would not be deemed to have arisen during the service.

6. The spinal question that falls for determination in the writ petition is whether the Chief Controller of Defence Accounts (Pensions), Allahabad,

can ignore the recommendations of the Medical Board. This question is no more resintegra. The spirit behind the Rules pertaining to the grant of

disability pension is that the recommendations of invalidating Medical Board/Resurvey Medical Board regarding claim of disability pension should

be respected by the Chief Controller of Defence Accounts, Allahabad.

7. Different Division Benches of Punjab & Haryana High Court have held that the disability indicated by the concerned Medical Board must be

accepted by the C.C.D.A. (Pension). This has been so held in Ashwani Kumar (ExHavildar) v. Union of India, 1997 (1) SLR 87. The same view

was reiterated in Ujagar Singh v. Union of India, 1997 (4) RSJ 587. A Division Bench of Delhi High Court has also considered the same question

in 'Raghubir Singh v. Union of India and another', 73 (1998) DLT 567, wherein the Court while placing reliance on the decision of the Supreme

Court in Ex. Sapper Mohinder Singh v. Union of India (Civil Appeal No.164 of 1993 decided on 14.01.1993) held that the C.C.D.A.(P) had no

power to override the opinion of the Medical Board which had discharged the petitioner from service with 30% disability.

8. In Darshan Singh v. Union of India, 2001 (2) SCT 813, the High Court of Punjab & Haryana held that it was not open to the C.C.D.A.

(Pension) or the Appellate Authority to record an opinion contrary to the Resurvey Medical Board, or the Medical Board concerned without

reexamination of the pensioner who has been boarded out from service on the ground of medical disability.

9. That apart, this controversy has also been set at rest by the Apex Court and given a final and definitive decision on the question in case 'Ex.

Sapper Mohinder Singh v. Union of India' (supra), wherein it has been observed as follows:

From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow

compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical

Board) while dealing with the case of grant of disability pension, in regard to the

percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line and comment upon the extent of disability without making any reference to a detailed or higher medical board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Corps.

10. In the present case, the petitioner was examined by the Medical Board and his composite disability was assessed at 50% for five years and his papers were sent for grant of disability pension to the C.C.D.A. (Pension) Allahabad, where his invalidating disability was accepted at 20% by the sanctioning authority. Again Resurvey Medical Board was conducted and disability was given 20% and was accepted by the sanctioning authority from 27.12.1996 to 26.04.1997. Further Resurvey Medical Board assessed the disability of the petitioner at 20% but the C.C.D.A. (Pension) Allahabad, which is the sanctioning authority accepted less than 20% (11% to 14%) and rejected the disability pension claim of the petitioner vide impugned order dated 04.03.2002.

11. The respondents have not placed any material on record to justify the opinion of the Medical Advisor (Pensions) attached to the PCDA (Pensions) Allahabad that the disability of the petitioner was 11% to 14% and not 20% as recommended by the Resurvey Medical Board. Though respondent no.3 is shown to have sought the opinion of the Medical Advisor attached to his office, there is nothing on record to show that the opinion of the Medical Advisor was given after having physically examined the petitioner. Such opinion by the Medical Advisor appears to be given only on the basis of documents on the record without examining the petitioner and without giving the reasons to differ from the opinion of the Resurvey Medical Board, which had assessed the disability in respect of the petitioner at 20% (permanent).

12. From the above analysis, it cannot, therefore, be appreciated that the C.C.D.A. (Pension) continues to implement its own view, which is contrary to the aforesaid judgments including the judgment of the Apex Court.

This obstinacy on the part of C.C.D.A. (Pension) is that there is proliferation in litigation which is wholly avoidable, tests the resources of exservicemen and wastes the time of the Courts. It exposes a lack of compassion and concern for human plight especially of persons who have suffered these disabilities while in the service of the Armed Forces. An attitude such as has been exemplified by the C.C.D.A. (Pension) is deleterious and demoralizing for persons fully aware of their duties and served in the Armed Forces. There seems to a concerned effort towards harassment instead of extending full care to the performance of their past duties.

13. It may further be pointed out that the scope of grant of disability pension has been extensively widened by the amendment of Army Pension

Regulation 173 by adding 173A, inasmuch as, now all the individuals who have been discharged on account of their permanently low medical

category become entitled to disability pension. An additional avenue created by an amendment with regard to the entitlement of the disability

pension irrespective of whether ailment or disease is attributable to or aggravated by military service. The petitioner having been boarded out from

service on account of permanent disability and his case is covered on both counts viz., also under the Amended Army Regulation 173A.

14. Consequently, the present writ petition is allowed. The impugned order dated 04.03.2002 passed by respondent no.2 is set aside and the

respondents are directed to pay disability pension to the petitioner at the rate of 20% disability as per rules. The entire arrears of the pension shall

be paid to the petitioner within three months from today and on the failure of the respondents to do so, they shall be liable to pay the interest at the

rate of 9% per annum.

15. There shall be no order as to costs.