
(1998) 05 DEL CK 0054
In the Delhi High Court
Case No : C.W. No. 1537 of 1995

Raghubir Singh

APPELLANT

Vs

U.O.I. and Another

RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Citation : (1998) 5 AD 593 : (1998) 73 DLT 567 : (1998) 46 DRJ 181 : (1999) 1 LLJ 82

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Judgement

M.S.A. Siddiqui, J.—The challenge in this Writ Petition is to the order dated 1st October, 1991 passed by the Controller of defense Accounts (P), Allahabad, by which he rejected the petitioner's disability pension on the ground that the injury was not connected with the service and as a result he cannot be declared to have suffered injury due to the service.

2. The petitioner was enrolled in the Army as Combatant Soldier and was appointed in the service on regular basis with effect from 30th January, 1975. While he was in service, he had sustained injury in his right ear. Due to lack of treatment, the said injury became aggravated. The invalidating Medical Board was held at the Military Hospital, which assessed his disability due to the said injury at 30%. He was recommended to be invalidated out of service. He was discharged from service as an invalidated man on 24.2.1991. Acting upon the medical opinion, the Commanding Officer sanctioned the 30% disability pension to the petitioner with effect from 25th February, 1991. But on reference to the Chief Controller of defense Accounts (P), Allahabad (for short "CCDA"), the petitioner's claim for disability pension was rejected on the ground that disability from which the petitioner suffered was neither attributable to, nor aggravated by the military service. Feeling aggrieved, the petitioner filed an appeal which was rejected as barred by time.

3. Learned Counsel for the petitioner contended that as per the Medical Report,

the injury was sustained by the petitioner while he was in service and, Therefore, it has to be presumed that it was during service and accordingly it must be attributable to military service. On a consideration of the entitlement rules, we are of the opinion that the contention of the learned counsel for the petitioner merits acceptance. Under Rule 173 of the Pension Regulations of the Army, 1961 (for short the Rules), a disability pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by military service, and is assessed at 20% or more. In this case, it is an admitted position that after examination of the petitioner by the invalidating Medical Board, his disability was assessed at 30%. It is stated in the affidavit filed by the petitioner that the injury in question was sustained by him while he was in service. It is significant to mention that the respondents have unequivocally admitted in the counter affidavit that the petitioner had served in the high altitude area from 11.11.1983 to 2.11.1985, and on 16.7.1987, he was admitted to the Military Hospital for treatment of "Sensory Neural Deafness" (both ears). He was placed in Low Medical Category (EEE) temporarily for 6 months and discharged from the hospital. The said low medical category continued for a further period of 6 months from 1.3.1988 by Medical Board held on 1.5.1988 at Military Hospital, Jalandhar. He was again admitted to Military Hospital, Bareilly for recategorization and was placed in permanent Low Medical Category (BEE) on 2nd November, 1988 for a period of two years. Under these circumstances, it can safely be inferred that the injury was sustained by the petitioner while he was in service and accordingly it must be attributable to the military service. Thus, the petitioner's case falls within the ambit of Rule 173.

4. Learned Counsel for the respondents has attempted to scuttle the merits of the petitioner's claim by contending that CCDA is the final Authority to decide the disability pension and as such the CCDA has rightly disallowed the disability pension to the petitioner. Now the question is; "Can the CCDA override the medical opinion of the invalidating Medical Board?" The Apex Court had an occasion to consider the said question in *Exsupper Mohinder Singh Vs. UOI*, Civil Appeal No.164/93 (arising out of SLP No. 4233/92) decided on 6.2.1995 and it was held that the opinion given by the invalidating Medical Board with regard to the assessment of disability of an incumbent should be respected until a fresh Medical Board examines the incumbent and comes to a different conclusion. Similar view has also been taken by Division Bench of this Court in Civil Writ Petition No. 2811/93 decided on 6.2.1995. Consequently, we are of the opinion that under the rules, the CCDA has no power to override the medical opinion of the invalidating Medical Board. If the Competent Authority is not satisfied with the medical opinion of the invalidating Medical Board, it may refer the case of the incumbent for re-examination by a properly constituted Medical Board for re-assessment of the disability. Thus the impugned order of the CCDA (P) is liable to be quashed and set aside. There is no other ground on which claim for disability pension can be denied.

5. For the foregoing reasons, this petition is allowed and the respondents are

directed to pay disability pension to the petitioner for the assessed disability, within two months from today. The petitioner also deserves the costs of this case which are quantified at Rs. 2,000/-.