
(2002) 09 MP CK 0033
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1940 of 2000

Raj Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2003) ILR (MP) 387 : (2002) 4 MPHT 399 : (2004) 1 MPJR 241

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Amrit Ruprah, for the Appellant; R.S. Patel, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India challenging the orders dated 10-1-2000 and 15-10-1990 by which the respondents have refused to grant "disability pension" to the petitioner.

It is not in dispute that the petitioner was in defence services from 25-11-1982 to 26-24990. For sometime he was posted on high altitudes. He was diagnosed by the Medical Authorities as a case of Depression (300-4) and placed in medical category EEE (Psychological). The disability was to the extent of 30%. According to the respondents "the invalidment is not attributable to military exercise and does not fulfil the following condition, namely, it existed before and has remained aggravated thereby" and therefore it was communicated to the petitioner by letter dated 16-8-1990 (Annexures P-2 and R-3) that the disability pension is not admissible to him. The petitioner made several representations to show that the disease was attributable to military exercise but the same have been rejected by letter dated 10-1-2000 (Annexure P-1).

Regulation 173 of the Pension Regulations, 1961 provides that unless otherwise specifically provided 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 per cent or over. The question whether a disability is attributable or aggravated by military service shall be determined under the rules in Appendix II. Rule 7 (b) in this Appendix lays down : "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 time of individual's acceptance for military service. However, if medical opinion holds for reasons to be recorded that 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."

In interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of section by which it is created. [Principles of Statutory Interpretation by Justice G.P. Singh 7th Edition (1999) Page 278].

In the present case no note of the disease of the petitioner was made at the time of his "acceptance for military service". It is not the case of the respondents that the petitioner was suffering from "depression" at the time of his entry in service. Therefore, according to the first limb of Rule 7 (b) in the Appendix it must be deemed that the disease has arisen in service. The second limb of the rule provides that if medical opinion holds "for reasons to be recorded" that 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. In the present case the medical authorities have not given any opinion to the effect that the disease could not have been detected on medical examination at the time of entry in service muchless recording the reasons in support of that opinion. The petitioner was not found to be suffering from the disease of "depression" at the time of his entry in the service and as there is no finding of the medical authorities that "the disease could not have been detected" it follows that the disease is attributable to military service within the meaning of Regulation 173. This Court has already taken such view in *Ex Sepoy Rajesh Kumar Upadhyay Vs. Union of India (UOI) and Others*, It is true that the Court cannot sit on the assessment made by the Medical Board, but there should be an opinion of the Medical Board that the disease could not have been detected on medical examination prior to acceptance for service.

The learned Counsel for the respondents has submitted a copy of order dated 22-3-2000 of the Full Bench of Kerala High Court. Rule 7 (b) in Appendix II has been interpreted in the decision of the Full Bench. It has been held that (a) the burden will be on the claimant to establish that the injury or the disease was on account of the military service or aggravated on account of it; (b) the onus in this regard is of a rebuttable nature; (c) the Medical Board is required to

elaborately deal with the matter and record reasons as contemplated in Rule 7 (b) to Appendix II and also to take note of various aspects highlighted in Appendix II itself.

In the present case, as already stated, the Medical Board has not given any finding that the disease could not have been detected on medical examination prior to acceptance for service. Therefore, the presumption arising under the first part of Rule 7 (b) would prevail. The disease of the petitioner will be deemed to have arisen in military service.

It is true that there has been delay in filing this writ petition, but the case of the petitioner is that he made several representations which were ultimately replied by letter dated 10-1-2000 (Annexure P-1) and the present petition was filed on 9-3-2000. The petitioner cannot be allowed disability pension upto the date of the filing of the petition because of the delay on his part but he is entitled to the disability pension from the date of filing of the writ petition.

In the result the writ petition is allowed. The respondents are directed to pay disability pension to the petitioner from the date of filing of the writ petition i.e., 9-3-2000 as admissible under Regulation 173 of the Pension Regulations, 1961. Costs as incurred.