

(2006) 07 DEL CK 0139
In the Delhi High Court
Case No : WP (C) 13733 of 2005

Rajender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Army Act, 1950 — Section 22

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2006) 07 DEL CK 0139

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : S.M. Dalal, for the Appellant; Maneesha Dhir and Surekha Srivastava and T. Parshad, Dy. JAG., for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—Mr. Rajender Singh was enrolled in Army as a Gunner on 8th August, 1980. He was examined by the medical board at the time of his entry in service. He went through the rigour and high standards of physical training and periodical medical check ups. He was never found to be suffering from any disease and he discharged his duties to the satisfaction of all concerned. After rendering 15 years of service, the petitioner was working in a field area in Eastern Sector where he was required to lift heavy parts of gun and carry them up hill. During the performance of the above arduous duty, the petitioner contracted the disease of "Cervical of Lumber Spondylosis" on 21th November, 1996. The petitioner was placed in low medical category CEE Permanent for the above disease as he could not be cured by treatment in military hospitals. He continued to serve in low medical category and on 2nd March, 2001, again after a lapse of nearly five years, the petitioner developed another disease namely "Perforated Duodenal Ulcer". It was operated upon in emergency condition and after treatment, the petitioner was placed in low medical category of BEE (Permanent) and finally on 31st August, 2002, the petitioner was invalided out of army service with 20% disability. According to the

petitioner, the medical board had said that the injury was attributable to army service. Despite this recommendation, the petitioner did not receive disability pension till 8th February, 2005. On 18th February, 2005, the petitioner was informed that PCDA(P) had assessed disability of the petitioner at less than 20%. It is contended on behalf of the petitioner that PCDA(P) had no authority or jurisdiction to sit over the opinion of the medical board which had declared the disability to be 20% and attributable to army service. Having failed to get any relief at the hand of the respondents, the petitioner has filed the present writ petition.

2. The respondents filed detailed counter affidavit. The stand of the respondents is summed up in para Nos. 2 to 4 of the counter affidavit which reads as under:

2. It is respectfully submitted that on down gradation low medical category CEE (Permanent) with effect from 21st November 1996, due to disease "CERVICAL SPONDYLOSIS" and "LUMBER SPONDYLOSIS", the petitioner was willing to continue in service in sheltered appointment/alternative employment. Accordingly, he was retained in service till he completed his terms of employment applicable to the rank of NK.

3. That on re-category Medical Board, the petitioner was retained in medical category SHAPE (Permanent), due to disease "PERFORATED DUODENAL ULCER (OPTD)", V- 67/204. As per the screening board, held in the unit on 19th January 2000, the petitioner rendered his unwillingness to continue in service. But, is further retention in service was neither recommended by the screening board nor approved by his Commanding Officer. As such, he was discharged from service after completion of 22 years service i.e. on fulfilling terms and conditions of service, applicable in his case. He was, brought before Release Medical Board at General Hospital on 6th August 2002 to assess the cause nature, and degree of his disablement, before discharge from service. The duly constituted Release Medical Board viewed his disabilities as under:

(a) "CERVICAL SPONDYLOSIS" Attributable to military service and "LUMBER SPONDYLOSIS" assessed at 15-19% for life. (b) "PERFORATED DUODENAL ULCER (OPTD) v-67/204 aggravated by military service and assessed at 20% for life.

4. That Disability Pension claim of the petitioner submitted to PCDA(P) Allahabad for awarding disability pension vide Arty Records letter No. 14391129/DP-58789/ Pen-2 dated 31st January 2003 was rejected by vide letter No. G-3/53/262/2-03 dated 5th January 2003, on the ground that the disability from which the petitioner suffered during service and on which his claim based was viewed as neither attributable to nor aggravated by military service and assessed the degree of disablement at less than 20% for life with effect from 6th August 2002. Therefore, the petitioner was not entitled to grant of disability pension in terms of Para 173 of Pension Regulations for the Army 1961, Part-1, disability pension is granted to an individual provided his disability is viewed either attributable to

or aggravated by military service and percentage of disablement is accepted at 20% or above by the Competent Pension Sanctioning Authority i.e. PCDA(P) Allahabad. In the instant case, the disability of petitioner was viewed as neither attributable nor aggravated by military service by the Competent Pension Sanctioning Authority i.e. PCDA(P) Allahabad. Hence, the petitioner is not entitled to grant of disability element of pension in terms of above Pension Regulations.

3. During the course of hearing, the report of the medical board along with AFMSF-16 was produced before the court. Though, the medical board had stated that the finding of the medical board about the entitlement of disability are recommendatory and the competent authority was to apply its own mind, still, the authorities could not have over-looked the said recommendation and that too without subjecting the petitioner to medical by appellate medical board or by specialists attached to PCDA(P). Lt. Col. V.K. Batish in his report had clearly stated that the petitioner was fit to be released in medical category P3(Permanent). The medical board had also recorded that the disability was not attributable to individual's own negligence or misconduct. While granting the above extent of disability of 15%-19% for Cervical Spondylosis and Lumber Spondylosis and 20% for perforated duodenal ulcer, in column 21 of the said form, the board had recommended the case of the petitioner for grant of disability pension. This recommendation of the medical board and of the sanctioning authority which forwarded the papers in terms of the Rule to the PCDA(P) for disbursement of the amount and issuance of PP Order, was declined by the pension authorities on the ground that the same was not attributable. This action of the pension authorities is without jurisdiction and is arbitrary. This controversy need not detain us any further as this aspect of the case is no more rest integra and is covered by various judgments of this Court as well as different High Courts. Reference in this regard can be made to a recent Division Bench judgment of this Court in the case of JC 264149M Ex. Naib Sub Marut Sharan Tiwari v. Union of India and Ors. WP(C) 23320/2005, decided on 13th July, 2006, where the court held as under:

...The scope of power of PCDA(P) is a very limited and normally it would hardly have any jurisdiction to sit over the findings of the medical board. In a given case, it may refer the matter to a medical specialist, as envisaged under the army instructions but exceptions apart, as a matter of rule, the PCDA(P) would be bound by the findings of the medical board and would be obliged to carry out its responsibility in issuing the PPO and disbursement of pension to the concerned member of the force. The ambit and scope of its power has been subject matter of controversy for quite some time. However, this question is no more rest integra and is answered squarely by various pronouncements of different courts.

2. In the case of Janak Raj v. Union of India and Ors. CWP No. 16976 of 1998 decided on 23.12.1999 by the Punjab & Haryana High Court : 2000 (1) RSJ 706

wherein the medical board had opined that the disease was aggravated due to stress and strains of army service and disability of the petitioner was assessed at 40% and the CDA had refused to sanction the disability sanction being not attributable to army service, the court held as under:

The short question that falls for consideration of this Court in the present writ petition whether the findings of the medical board could be altered to the prejudice of the petitioner by the C.D.A. and could the C.D.A. sit in judgment over the findings recorded by the medical board. This question is quite settled and does not call for any detailed discussion on the subject. It is a settled principle of law that the C.D.A. is not an expert body in regard to the determination of extent of medical disability or its attributability or aggravation to the military service. At this stage it will be appropriate to refer to the judgment of this Court in the case of *Ujagar Singh v. Union of India and Ors.* 1997 (4) RSJ 587 where after detailed discussion, it was held as under:

From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is a very narrow compass viz whether the Chief Controller of defense 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 defense 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 Corp. Somewhat similar defense was raised on behalf of the Union of India before the Hon'ble Apex Court in the case of *Ex. Sapper Mohinder Singh v. Union of India* Civil Appeal No. 164 of 1993 decided on 14th January, 1993, where the Court held as under:

We have examined the relevant materials and we do not feel satisfied with the plea taken in the counter affidavit. No details of the consultation has been disclosed by the respondent nor it is claimed that the appellant has been re-examined by any higher medical authority. We are not prepared to set on the vague allegations in the counter affidavit referred to above. In view of all the relevant circumstances of the case we are of the opinion that the Disability Pension assessed at the rate of 40% by the Medical Board which had examined appellant, should be respected until fresh Medical Board examined the appellant again the reached different conclusion.

An identical stand was taken by the Union of India in the case of *Mam Raj v. Union of India* CWP No. 2302 of 1997 decided on 10.9.1996 by this Court where this Court held as under:

Instruction No. 27 under the head of "function and responsibilities" of Appendix II of these instructions at best empowers the Medical Authority so constituted to give its view about assessment of disablement restricted to the medical issues. The Medical Board (s) views and findings could be subject to any appellate view by the Director General, Armed Forces Medical Services whose view would be final. Nothing has been brought on record before us which would show that subsequent to the Medical Board, as a result of which the petitioner was discharged from Army was held by the competent authority and that gave any findings contrary to the view expressed by the earlier Medical Board.

XXX XXX XXX In view of the above settled principles and more particularly keeping in view the facts stated in the written statement itself this Court has no choice but to set aside the impugned orders as they suffer from any apparent error of lack of jurisdiction. As per rules C.D.A. Cannot sit in judgment over the findings of the medical board specially when the Government had referred the matter back to C.D.A. and sent reminders. In that event, the C.D.A. was expected to act in consonance with rules and settled law.

3. In the case of Ex. Sepoy Jagmel Singh v. UOI and Ors. CWP 12749/1998 decided on 16.3.2000 by the Punjab & Haryana High Court : 2000 (3) RSJ 88 wherein the petitioner was denied the disability pension by the CDA(P) Allahabad vide their letter dated 12th September 1988 holding that the disability was less than 20 per cent and as such he was not entitled to receive disability pension, though the medical board, after 9 years of petitioner's service and while placing the petitioner under permanent medical low category EEE on the opinion of the surgical specialist, stated that disability was more than 20 per cent. In that case, the court held as under:

I have already noticed that the facts in the present case are hardly in issue and as far as the question of law is concerned that stood answered by the Division Bench of this Court in the case of Amar Nath v. Union of India and Ors. 1998 (1) AIJ 478, where the court, after discussing the law in detail, held as under:

Once this certificate was issued in favor of the appellant entitling him to receive the disability pension, this benefit could not have been withdrawn by the Controller of defense Accounts (P), Allahabad on his own without holding appellate medical board in accordance with law. Exhibit D.3 while rejecting the claim of the appellant referred to period of 10 years previous of 25.6.1988 and disability being less than 20%. This was never put to the appellant prior to the passing of the order. If the appellant was entitled to the benefit in accordance with the rules on the strength of the disability certificate Ex.P.1, the appellant could not be divested of the same without following due process of law and after giving proper opportunity to the appellant which admittedly has not been done in the present case. The corollary to this main issue is as to whether the Controller of defense Accounts (P), Allahabad at all was justified in assuming the jurisdiction which is not vested in it under the rules. Under the relevant rules and instructions, the respondents have the authority to constitute an Appellate Board

and disturb the findings arrived at by the first medical board which again was not done, it would not be permissible to disturb the findings without taking recourse to the relevant rules and instructions governing the subject.

XXX XXX XXX Reference can also be made to the decision rendered in L.P.A. No. 82 of 1997 titled as Union of India and Ors. v. Ex. Captain Harbhajan Singh, decided on 25.4.1997. In the present writ petition, no details have stated in the counter affidavit filed on behalf of the Union of India nor any documents has been produced before us which could satisfy the above enunciated principles it has also been held that pension and likewise the disability pension is recurring cause of action and mere delay will not frustrate the claim of the petitioner.

Learned Counsel for the appellant has also relied upon the case of Ram Singh Jaggi v. Union of India and Ors. 1995(4) R.S.J. 807, where a Division Bench of the Himachal Pradesh High Court took the same view.

6. From the above settled principles of law, I have no hesitation in coming to the conclusion that the learned courts below have fallen in error in coming to the conclusion that the Controller of defense Accounts (P), Allahabad can disturb the findings of the medical board in the present manner. Admittedly, no evidence has been brought on record much less an expert evidence recorded by the medical officer to show that the finding recorded by the medical board where incorrect factually or otherwise.

7. Moreover, from the record, which has been produced by the learned Counsel for the parties, I find that a specific ground was raised before the learned first Appellant Authority that Controller of defense Accounts (P), Allahabad had no authority to express view contrary to the medical board. This contention has not been properly dealt with by the learned first Appellant Court. Keeping in view the instructions aforesaid there is no escape from setting aside the contents of exhibit D.3 being against the rule and settled law.

Under para 17 (page 129 of the Army Pension Regulation Book placed on record), it is the Medical Adviser to the pension board, who is appropriate authority to opine upon such matters. There is no averment in the counter-affidavit that the Medical Adviser was consulted in the present matter and that he had acted in consonance with the principles of natural justice and had afforded an opportunity to the petitioner of being examined before alleged reduction of the disability from 25% to 20%. I find it unnecessary to discuss in some elaboration this controversy as it does not even arise in the present case. The respondents have not raised any such plea in the counter-affidavit nor any records were produced before the Court which could justify even this argument on the strength of record, as it is writ of Certiorari. Be that as it may, the CCDA(P) itself had admittedly no jurisdiction to upset findings recorded by a duly constituted medical board or re-survey medical board under the relevant rules. It is conceded that the medical board is headed by the officers of high ranks i.e. Lt. Col. and even above higher ranks depending upon member of the force who is

subjected to such medical board. It still remains to be considered whether the opinion of a duly constituted medical board can be over looked or varied even by the Medical Adviser to the CCDA(P), who is the sole member and may be inferior in rank to the head of the medical board, who had examined the concerned applicant. Further, it will have also to be gone into and answered in an appropriate case whether the principles of natural justice would have to be adhered to before reduction of disability which has been certified by the duly constituted board or by any such authority except the appellate medical board which might be constituted at the request of either party in accordance with rules. These are the few doubts, which arise in the mind of the Court as ancillary question to the arguments raised by the learned Counsel for the Union of India but in the present case there is hardly a controversy and it is apparent on the face of the record and the respondent-CCDA(P) has exceeded its jurisdiction and authority in reducing the disability of the petitioner, who was subject to one medical board and two re-survey medical boards and all of them defined the disability of the petitioner more than 20%.

4. Still in another case titled as Suresh Chander Kesar v. Union of India and Ors. CWP No. 33/1999 decided on 2.3.2000 by the Punjab & Haryana High Court, the petitioner was placed by the medical board in low medical category EEE and was consequently discharged on medical grounds on 31.10.1989 with disability more than 20% as being aggravated by military service. The invaliding medical board was approved by ADMS HQ 16 Corps on October 11, 1989 and the petitioner was invalided from army. However on the objection of the CCDA(P) Allahabad, the disability pension was denied. In that case, the court while granting relief to the petitioner held as under:

Under Rule 173 of the Army Pension Regulations 1961 and disability pensionary award clearly provides that a disability pension would consist of service element and disability element. Such disability pension would be granted to a person who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and disability being assessed at 20% or above. Rule 183 which confirms the above two elements as constituents of the disability pension, there it also provides for computation of such pension. There can be no dispute to the fact that the petitioner fulfills all these qualifications. He has suffered a disability of 30 % (which is more than 20%) and was discharged from service on account of disability which was aggravated by military service.

In view of the above settled position of law, the regulations governing the subject and the stand taken by the respondents in the written statement/counter affidavit, I have no hesitation in allowing the writ petition. The respondent-CCDA(P) had no jurisdiction to reject and differ with the finding recorded by an expert body and that too without following the prescribed procedure and in violation of the principles of natural justice."

5. A Division Bench of this Court in the case of Ex. Ct. Jasbir Singh and Others

Vs. Union of India (UOI) and Others, while hearing a bunch of writ petitions also took the similar view. The dictum of the court is clearly reflected in the following paragraphs of the judgment:

7. We also hold that where a person is invalided out of service on account of lowering of his medical category it is incumbent upon the respondents to inform the person concerned that he has been invalided out of service on account of lower medical category and inform the percentage of disability and/or disease so that he exercises his right, if so advised, to make an appropriate appeal to the authority concerned. In cases where the aforesaid procedure has not been followed and the petitioners who have been invalided out of service on account of lowering of medical category assessing percentage of disability to be more than 20% non-grant of disability pension to such petitioners by Controller of defense Accounts (Pension) is wholly arbitrary and illegal. We quash the said orders.

8. Similarly, in cases where a court of enquiry has been held with regard to any injury of a person and it has been held by the Commanding Officer that the injury sustained by the petitioner was attributable to military service and the person was placed in low medical category, orders passed by the Chief Controller of defense Accounts (Pension) summarily rejecting the disability claim without following the procedure, as mentioned in Shri Bhagwan's case (supra), suffers from infirmity and the same are hereby quashed.

6. Reference can also be made to another judgment of the Punjab & Haryana High Court in the case of Ramesh Kumar Sharma v. Union of India and Ors. 2004 (2) SCT 870 : 2004 (2) RSJ 116 where the court held as under:

7. We have examined the relevant material and do not feel satisfied with the plea taken by the respondents in their reply. A perusal of the report, dated 10.12.1999 (Annexure P/1), clearly shows that at the time of joining the military service the petitioner did not suffer any disability and the Medical Board has clearly opined that the disability was aggravated due to stress and strain of military service and the petitioner is suffering from 30% disability. When the pension papers were sent to P.C.D.A. Allahabad, it was only to ascertain about the pension but not to sit over the opinion and findings of the Medical Board. This has been so held by this Court in the case of Havaladar Ram Phal v. Union of India and Ors. 2002 (4) SCT 952 (P&H) : 2003 (2) RSJ 228.

7. In the judgment of the Division Bench of this Court in Ex Const.Jasbir Singh (supra), reference was made to another Division Bench judgment of this Court in the case of Ex-Signalman Shri Bhagwan Vs. Union of India (UOI), . In the Judgment of the Court in Sri Bhagwan's case the consistent view taken by the Court is that the jurisdiction of the PCDA(P) is a very limited one and at best it can refer back the case to the competent authority for replying to the queries, if any, raised by the pension authorities that too in accordance with rules but it certainly has no jurisdiction to take a view contrary to the view of the Medical Board. Arbitrary non-acceptance of view of the Medical Board would be in

violation to the rules as well as the principles of law stated by the Courts. In all the above cases, the Courts have dealt with the provisions entitling the member of the Armed Forces to receive disability pension. There is no divergence of view in regard to ambit and scope of power of PCDA(P) and binding nature of the opinion of the Medical Board constituted in accordance with rules. Regulation 173 of the Pension Regulations for Army, 1961 Appendix II relates to grant of entitlement for disability pension. Section 22 of the Army Act and the instructions issued by the competent authorities as afore-referred, leave no doubt that PCDA(P) is vested with no jurisdiction of its own to reject issuance of PPO and disbursement of pension after receiving sanction of the competent authority in terms of AFMSF-16 accompanied by the medical opinion of the duly constituted Medical Board. Once conditions of Regulation 173 of the Pension Regulations, 1961 are satisfied, the jurisdiction of the PCDA(P) is very limited. Once the rules required the authorities to perform acts in a particular manner then it is expected that they would be done as required. Action qualibet it suavia. In other words things should take the prescribed course and the prescribed procedure should not be permitted to be frustrated particularly by arbitrary exercise of power. In the case of S. Balachandran Nair (*supra*), the Supreme Court has clearly stated the nature and effectiveness of a medical opinion expressed by the appropriate Board in accordance with rules. Once the PCDA(P) transgresses its specified jurisdiction, their action would invite judicial intervention.

8. In view of the above settled position of law, the claim of the petitioner merits acceptance. Consequently, this writ petition is allowed. The respondents are directed to consider and grant disability pension to the petitioner as per the recommendations of the medical board, its acceptance by the administrative authorities and in conformity with the relevant rules.

9. The writ petition is disposed of while leaving the parties to bear their own costs.