
(2007) 06 SHI CK 0035
In the High Court Of Himachal Pradesh

Ram Krishan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-06-2007

Acts Referred:

Army Rules, 1954 — Rule 13(3)

Citation : (2007) 2 ShimLC 495

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Indian Army on 8th October, 1979. He suffered battle casualty on 5.1.2002, resulting in his discharge after completion of 25 and 106 days of service. He was placed in the low medical classification after holding Medical Board. He was subsequently asked to appear before the Re-survey Medical Board on 4th December, 2004. He was declared invalided and recommended him "fit to release from service in medical category S, H, A2(P)P,E" with effect from 31.1.2005. His disability was declared attributable to army service and was recorded more than 30%. He was discharged on 31.1.2005 and the reason of discharge was shown as "completion of tenure of his service" under Army Rule 13(3) and was granted service pension of Rs. 5,643/- per month with effect from 1.2.2005. He was not granted disability pension even though his disability was assessed at more than 30% which was attributable to the Army service. He was informed on 7th March, 2005 that since he was discharged on compassionate ground he was not entitled to the disability pension.

2. The case set up by the respondent in its reply is that the petitioner had sought discharge on compassionate ground and he was transferred to pension establishment at his own request in low medical category and thus he was not eligible for grant of disability pension under provision of Para 173 of the Pension

Regulations. It has also come in the reply that he had submitted application on 13.10.2004 which was approved by the Officer In-charge Records on 2.12.2004 and accordingly he was transferred to pension establishment under Item No. 1(i) (b) of the table annexed to Rule 13(3) of Army Rules, 1954 after rendering 25 years and 106 days service.

3. Mr. O.P. Thakur, learned Counsel for the petitioner had strenuously argued that the respondent is misconstruing the provision of Army Rules, 1954 which has resulted in non grant of the disability pension to him. Ms. Shilpa Sood, learned Central Government Counsel for the respondent had supported the letter dated 17th March, 2005 on the basis of which the petitioner had not been held entitled to disability pension.

4. I have heard learned Counsel for the parties and have also gone through the record carefully.

Admittedly the petitioner had received injury on 23.5.2002 due to mine blast which resulted in injury "(Rt) foot with fracture calcaneum with loss of skin + soft tissue Grade III open fracture". His case was reviewed by a medical board on 7.11.2002 held at 164 Military Hospital on 12.11.2002 and was downgraded to low medical category for two years with effect from 7.11.2002 to 7.11.2004. It is also admitted fact that the petitioner's disability was assessed at more than 30%. The question which falls for consideration before this Court is whether the action of transferring him to the pension establishment on the basis of Item No. 1(i)(b) of Table annexed to Rule 13(3) of Army Rules, 1954 is in accordance with law or not. It will be apt to reproduce the relevant portion of Rule 13 along with relevant table for better appreciation of the rival submissions:

13. Authorities empowered to authorize discharge.-(1) Each of the authorities specified in column 3 of the Table below, shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(2-A) Where the Central Government or the Chief of the Army Staff decides that any person or class of persons subject to the Act should be discharged from service, either unconditionally or on the fulfillment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officer and

warrant officers of Remounts, Veterinary and Farms, Corps, the "Commanding Officer" means the Director Remounts, Veterinary and Farms.

Table _____
 _____ Category Grounds of discharge Competent
 Manner of authority to discharge authorize discharge _____

_____ 1 2 3 4 _____ Juniorl (i)(a) On completion of the
 period Commanding Commissio- of service or tenure specified in Officer ned
 Officer the Regulations for his rank or appointment, are on reaching the age
 limit whichever is earlier, unless trainee on the active list for further specified
 period with the sanction of the Chief of the Army staff or on becoming eligible
 for release under the Regulations. (b) At his own request on transfer
 Commanding to the pension establishment Officer _____

1 2 3 4 (ii) Having been found medically Commanding To be carried out unfit
 for further service. Officer only on the recommendation of an Invalidating
 Board. (iii) All other classes of discharge. (a) Inthe case of If the discharge is
 Junior Commissi- not at the request oned Officers of the Junior granted direct
 Commissioned commissions Officer the compe- during the first tent authority
 12 months service before sanctioning Area/Divisional the discharge shall
 Commander. if the circums- tances of the case permit give the Junior
 Commissioned Officer concerned an opportunity to show-cause against the
 order of discharge. (b) In the case of JCOs, not covered by (a), serving in
 any Army or Command the General Officer Commanding- in-Chief of that
 Army or command if not below the rank of Lieutenant General. (c) In any
 other case the chief of the Army Staff. Warrant II.(i)(a) On completion of the
 period Commanding Officer of service or tenure specified in the Officer.
 Regulations for this rank or appoint- ment, or on reaching the age limit,
 whichever is earlier, unless retained on the active list for a further specified
 period with the sanction of the Brigade/Sub-Area Commander or on becoming
 eligible to release under the regulations. (b) At his own request on transfer to
 Commanding the pension establishment Officer. (ii) Having been found
 medically Commanding To be carried out unfit for further service. Officer. only
 on the reco- mmendation of an Invalidating Board. 5. The petitioner's
 disability has been assessed at 30% and having been found unfit his case was to
 fall under Army Rule 13(3) II (ii) and not 13(3) II (b) as pleaded by the
 respondent. The petitioner has never made any representation that he should be
 transferred to the pension establishment. He had put in 25 years and 105 days
 service in the Army but has been denied the pension by misconstruing Rule 13 of
 the Army Rules, 1954. The question under what circumstances an individual has
 to be placed either under 13 (3) II (b) or (ii) has been considered by a Division
 Bench of the Delhi High Court in Ex Subedar Baljor Singh v. Union of India and
 Ors. 1997 LAB I.C. 1818. The Division Bench after taking into consideration the

facts of the case had opined as under:

17. It is not disputed that had the sheltered appointment not been provided to the petitioner, he in terms of letter dated 20.8.1982 would have been discharged by 10.1.1994, namely, within a period of six months from the date of his being placed in low medical category (permanent). As the petitioner was retained in service in public interest, in terms of Government of India letter dated 10.5.1977, he was to be retained so long the sheltered appointment was available. He could have declined the sheltered appointment, when offered to him. It was not done. The petitioner did not express his unwillingness to serve and thus continued to serve but had ultimately to pray for being discharged. It was done by moving an application, which reads:

I have the honour to state that I am handicapped Rt. Leg below knee JCO. My right leg was amputated at Base Hospital, Lucknow on 8 February, 93 and till today I am not feeling comfortable due to pain at my right leg. It is an obstacle to discharge my duties.

Therefore I request you please grant me premature retirement.

18. Having once acquired the -eligibility for being granted the disability pension and disability benefits at a stage when the petitioner was placed in low medical category (permanent), he could not have been denied the benefit of the same in case he sought and was allowed discharge later on due to the same ailment due to which he was placed in low medical category. Army Order 146/77 to suggest that category "C JCO embraces all personnel, who are not fit for active service with units/formation Head Quarter involved in actual fighting but are fit for such duties which do not involve severe strain. On the day when the above request was made, the petitioner had made a request for exemption to perform night duty because of his medical condition. The application dated 30.3.1994, in which he sought exemption stated that being handicapped, the doctors had placed him in low medical category and that the artificial limb cannot be worn by him for more than an hour, as such he was having constant pain in amputated right leg. When this request was not acceded to, which could have been allowed had instructions contained in Army Order 146/77 been correctly followed. Faced with this situation, the petitioner was left with no other option except to move an application for discharge on medical ground, which was also recommended on medical grounds by the Commanding Officer in the following words:

JC-13449K. Sub (Trir) Baljor Singh of this unit met with an MT accident on 2 Feb., 93 and was hospitalized. The Rt. Leg (below knee) of the JCO was amputated at Base Hosp. Lucknow on 8 Feb., 93. The JCO was given an Artificial Limb and was placed in low med cat CEE (Permt) w.e.f. 10th Feb., 93. There is no specific restriction advised on the employability by the med. Auth. except those specified under AO 146/77.

2. The JCO has put an application for premature retirement from service on med. grounds. The JCO is due for normal retirement in March 2003.

3. I have personally known the actual facts of the case of the JCO as he is not feeling comfortable due to recurring pain at his right leg.

4. Under these circumstances, having fully weighed the pros and cons of the case, the premature disch of this JCO from service is strongly recommended.

Station: C/o 56 APO Sd/- Dated 19 April, 1994 (J.S. Brar) Lt.Col. Commanding Officer.

19. It was on the aforementioned recommendation that the petitioner was discharged. The discharge of the petitioner, may be on his own request, in the circumstances aforementioned above has to be treated as a discharge due to medical grounds, during the extended period of retention. It was not due to any other reason, but was due to medical grounds. Had it been on any other ground other than medical grounds, the petitioner would not be entitled to any relief. It was because of low medical category (permanent) that the petitioner was unable to discharge the duties during the extended period of service due to the duties, performance of which involved stress and strain not commensurate with the medical category of the petitioner. When discharge was sought on medical grounds, and it was recommended also on medical grounds, such discharge has to be treated as a discharge on medical grounds. May be that for that purpose the petitioner submitted his request, which was duly recommended by the Commanding Officer that it was because of the medical condition of the petitioner as a direct result in the injuries sustained by him.

6. This Court is of the opinion after taking into consideration the discussion made hereinabove and after taking into consideration the judgment of the Division Bench of Delhi High Court that the petitioner is deemed to have been put under Rule 13(3) II (ii) instead of 13(3) II (b). The petitioner has made a request for discharge from the army service only on the following grounds:

(a) My wife is ill since last 5 years and she is under treatment at Civil Hospital. Due to this reason my children education is also getting hampered.

(b) I am unable to do hard work of the Army.

(c) I am having 20 kanal agricultural land which is barren without its look after.

7. He has specifically stated in his application dated 13.10.2004 that he was unable to do hard work of the army. On the basis of injury received by him on 23.5.2002 his disability was assessed at 30%. The petitioner's request for seeking retirement was on the medical grounds and not voluntary as projected by the respondent and accordingly he was to be put in category 13(3) item No. II (ii) having been found medically unfit. Accordingly Annexure P-5 is liable to be struck down. Consequently this petition is allowed.

Annexure P-5 is quashed and set aside. The respondent is directed to grant disability pension to the petitioner with effect from 1.2.2005.

No costs.