
(2001) 04 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3480 of 1998

Ram Niwas

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173, 27(C)

Citation : (2001) 04 P&H CK 0014

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. R.A. Yadav, for the Appellant; Mr. Kamal Seghal, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Ram Niwas joined the Indian Army as sepoy on 10.7.58. In the year 1959, he had developed a dangerous disease i.e. C.S.O.M. (left) and got medical treatment in the military hospital. On account of disability, he was invalided out of service by the Medical Hoard. He was not given any disability pension nor was he got examined by the Resurvey Medical Board with a view to finding out whether the disability was attributable to and aggravated by the army service. He filed suit for declaration to the effect that the order/letter No. R-6792309 DP of Apr 1961 and CDA(P), Allahabad leller dated 9 Mar, 1960 conveyed by the Army Headquarter, Directorate General of Medical Services (Army)/D.G.M.S.-3.D., Adj. General's Branch Hq. letter No. 8/74303/DGMS-3D of 26 Jan 1989 are wrong, illegal, against facts, without jurisdiction, against the service rules of the plain- tiff, arbitrary, against the principles of natural justice and equity, discriminatory, ultra vires, null and void and ineffective against the right of the plaintiff and he is entitled to disability pension w.e.f. the date of discharge from the army service/invalided out of service by the medical Board being disabled together with other benefits attached to such disability pension along with arrears and interest @ 18% per annum. It was alleged in the plaint

that he was entitled to pension as disability was attributable to and aggravated by the army service.

2. Defendant-Union of India contested the suit urging that the suit is barred by limitation. Plaintiff's disability was considered by CDA(P) as neither attributable to nor aggravated by military service, as such, no disability pension was admissible to him under the rules. He was discharged from service without being entitled to disability pension as disability was considered as not attributable to or aggravated by military service. Disability pension is granted if the individual is discharged from service and disability is attributable to or aggravated by military service and the degree of disability is assessed at 20% or more. Medical Board opined that the plaintiff was in a state of remission at the time of enrolment in the army, as such, the detection of disability could have been missed on enrolment. He was discharged as recruit and not as sepoy.

3. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is entitled to disability pension after his discharge from the Army service, if so, at what rate ? OPP
2. Whether the civil Court has no jurisdiction to try and decide the suit ? OPD
3. Whether the suit is time barred ? OPD
4. Whether the suit is bad for want of notice ? OPD
5. Relief.

Vide order dated 4.5.1996, plaintiffs suit was dismissed by Civil Judge (Senior Division), Narnaul in view of his finding that the plaintiff's disease was not attributable to army service. His disease was constitutional disease in his left ear and was not attributable to army service. This disease cannot be detected at the time of enrolment if individual is in the stage of remission. Disease was characterised by period of exacerbations and spontaneous remissions and it is not unlikely that the conditions is missed on enrolment if the individual is enlisted during one of the periods of remission. It was found that this type of disease from which the plaintiff was suffering could not have been detected at the time of his enrolment to the army if the individual was in the stage of remission. Plaintiffs suit was found to be time barred.

4. Plaintiff went in appeal which was dismissed by Additional District Judge, Narnaul vide order dated 25.7.1998. Still not satisfied, plaintiff has come up in appeal to this Court.

5. It was submitted by the learned counsel for the appellant that the appellant-plaintiff should have been allowed disability pension because when he was recruited to the army in the year 1958, he was medically examined and no disease was detected and he was found medically fit. It was after his recruitment to the army that he incurred this disease called C.S.O.M. (left). This disease was attributable to army service. It was submitted that when he was subjected to

medical examination at the time of his enrolment in the army, he was found free from disease and therefore, it had to be presumed that he incurred this disease while in army. It was submitted that he was entitled to "disability pension". He became deaf during training period due to gun firing. In support of this submission, he drew my attention to *Shyam Lal Malhotra v. Union of India* 1994(1) SCT 667, where the writ petition of Shyam Lal was allowed who had asked for disability pension. He was discharged from army service due to 40% disability on account of the disease "Sensory Neural Deafness". At the time of his enrolment in the Army he was not suffering from any disease. He became deaf of account of nature of his duties while dealing with high thunder and loud voice equipment. Due to continuous testing of the equipment while repairing, overhauling of which involved high sound thunder and busting with loud voice, he felt some trouble in his ears and reported sick in the M.I. Room and was kept under treatment. As the trouble started aggravating, he was shifted in Hospital where he was treated for few months and downgraded to category "CEE" and was sent back to his unit for performance of normal duties. After return he continued to preform his duties and thereafter again the disease aggravated due to discharge from his ears which, it is stated, directly impaired his hearing power. He was re-admitted to Military Hospital and remained there for considerable period and ultimately when it was found that the disease was uncontrollable, he was downgraded to Medical Category "EEB" permanent with 40% disability and the disease was diagnosed as "Sensory Neural Deafness" (both ears) and in consequence of the recommendations of the Invalidating Medical Board, he was found medically unfit for further service in the Army and was invalided out of Military Service.

6. Learned counsel for the appellant, thus, submitted that he suffered this disease because of army service and therefore, he was entitled to disability pension.,

7. Learned counsel for the Union of India, on the other hand, submitted that he was not entitled to disability pension because the disease was not attributable to army service. It was submitted that during his short tenure of service, he remained under training and he never served in the field area. Capt. Ratipal Singh Chouhan, AMC, Lucknow UP DWI proved the opinion of the Medical Board Ex.D2 and ENT Specialist Ex.D3 respectively on the basis of which he was discharged from service on 22.12.1959. He stated that during his short tenure of service, he remained under training. He never served in the field area. In other words, he had not developed his disease in service. Lt. Col. S. Chaudhary, MO, DGMS (RM) DW2 stated that he was suffering from chronic Suppurative Otitis media. It was chronic inflammatory disease of the left ear. The condition usually results from an unresolved acute, otitis media. The disease is characterised by period of exacerbations and spontaneous remissions. It is not unlikely that the condition is missed on enrolment if the individual is enlisted during one of the periods of remission. This type of disease cannot be detected at the time of enrolment if the individual is in the stage of remission. He stated that it could not

be visible in the period of remission. It was suggested to him during cross-examination that the plaintiff incurred this disease during army service and he denied this suggestion. It is a constitutional disease. He was not posted in high altitude area or incongenial area. On the basis of the opinion of U. Col. S. Chaudhary, MO, DGMS (RM) DW2, the counsel for the Union of India submitted that the disease of the plaintiff in the left ear was not attributable to army service though the degree of disability was assessed at 20%. It was submitted that the plaintiff was found fit during the period of remission. Such a condition is likely to have been missed on enrolment. It was submitted that there is not even a shred of evidence that he was posted in high altitude area or in incongenial area and this disease was caused due to the noise created by gun fire. Lt. Col. S. Chaudhary DW2 has quite categorically stated that this is a constitutional disease and was not incurred by him during army service. It was submitted that report Ex.D2 of the Medical Board shows that he was suffering from this disease since quite a long period and this type of disease can be missed. As such, it could not be detected at the time of enrolment. In *Darshan Singh v. Union of India and others* 1992(2) SCT 196 : 1992(1) SLR 35, no disability pension was allowed to Darshan Singh as it was found that he was suffering from deafness which could not have been detected at the time when he was recruited in the army. It was found that it was of no consequence that no note was made at the time of his acceptance into military service that he was suffering from a disease like the one on account of which he was discharged from service. Medical opinion relied upon by the Union of India showed that he was suffering from deafness prior to joining the army. According to Regulation 173 and Appendix II of disability pension regulations for the Army 1961, 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 the individual's acceptance for military service, provided the medical opinion holds that such a disease could not have been detected on medical examination prior to the acceptance of the individual for service. It was submitted that it is true that at the time of initial recruitment into service, an individual is put to through medical examination, still there are diseases which cannot be detected by the medical tests which an individual has to undergo. It was submitted that the plaintiff was suffering from this disease even before he joined Army. It was a constitutional disease.

8. In my opinion, the submission made by the learned counsel for the Union of India should be allowed to hold the field when there is no evidence that the plaintiff was posted in high altitude or in incongenial area, It was a constitutional disease. It was not unlikely that the condition was missed on enrolment if the individual was enlisted during one of the periods of remissions. In my opinion, case *Shyam Lal Malhotra v. Union of India* (supra) cannot come to the rescue of the plaintiff when it is not proved that this disease could be incurred by him due to the duties being performed by him in the army. It has thus to be held that the plaintiff was suffering from this disease since before he joined the army and he had not incurred this disease while in army. It was a constitutional disease which

could not be detected at the time when he was medically examined for enrolment as he was examined during one of the periods of remissions,

9. Plaintiffs suit was within limitation as claim to pension arises daily. At best, the plaintiff could claim arrears of pension for a period of 38 months preceding the date of suit if the order refusing him disability pension is set aside. If order refusing him disability pension is set aside, he becomes entitled to disability pension from the date of suit onwards.

Appeal fails and is dismissed.

10. Appeal dismissed.