
(2004) 04 OHC CK 0004

In the Orissa High Court

Case No : Original Jurisdiction Case No. 10018 of 1993

Ramesh Chandra Sahoo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Citation : (2004) 2 OLR 52

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : I. Mohanty, R. Das and L. Pradhan, for the Appellant; Sr. Standing Counsel, Central, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioner after facing rigours of recruitment test conducted by the Army on 3.12.1975 at Cuttack was selected for being appointed in the cadre of Welder. After medical examination, he was found fit and joined as a Welder being assigned "No. 14525926" in the Unit of Corps EME (C) Coy and underwent training. After completion of the training he joined at Secunderabad (A.P.). While discharging his duties, as ill luck would have it, he fell sick and was admitted in the Army Hospital, Delhi in July 1978. Thereafter he was shifted to the Military Hospital at Secunderabad for better treatment. The health condition of the petitioner deteriorated and he was again shifted to EME, OEPO, BN, Secunderabad in October, 1978. In consonance with the medical report, as the petitioner's health condition did not improve, he was declared invalid and unfit for Army services with effect from 16.1.1979 basing upon the report of the Army Medical Officer. According to the medical report, he was suffering from "Cerebral Cysticercosis". The petitioner returned to his villager and got admitted in S.C.B. Medical College and Hospital, Cuttack for treatment and after treatment he was cured. Thereafter he applied for invalid pension through Zilla Sainik Board on 12.1.1983. The Assistant Record Officer, Secunderabad by his letter dated 10.3.1983 intimated the petitioner that his claim for invalid pension could not be

entertained at a belated stage and rejected the same. The petitioner, thereafter approached the Union Government in the Department of Ministry of Personal Public Grievances and Pensions for sanction of invalid pension and the Government was pleased to refer the matter to the Ministry of Defence on 5.1.1990 for consideration. As no action was taken by the authorities, the petitioner was constrained to submit a representation on 5.12.1991. After receiving the representation/notice the concerned authority by letter dated 1.4.1992 intimated the petitioner to file an appeal, if so advised. In consonance with the said letter the petitioner filed an Appeal but the Senior Record Officer by his letter dated 6.7.1993 intimated the petitioner that the appeal had been rejected for inordinate delay. Having no other way, the petitioner has preferred this writ application.

2. A counter affidavit has been filed by the opposite parties taking a stand that the petitioner raised his claim for disability pension at a much belated stage and as the claim was stale such application could not be entertained. A stand has also been taken to the effect that the disease suffered by the petitioner was neither in course of his service nor attributable to the service and as such the petitioner is not entitled to any pension.

3. I have heard learned Counsel for the parties, perused the materials available on record and I have given anxious thought to the relief sought. Admittedly, before the petitioner joined the Army service, he was medically examined by the Army Doctors. He was found completely fit to join the Army. He served the Army for more than three years without any blemish. In course of such service he suffered from the disease which aggravated and finally he was declared unfit for Army service in 1979 and was discharged. After returning to his village he got himself admitted in the S.C.B. Medical College Hospital and he was cured from his disease only in the year 1983. After being cured he approached the concerned authority to sanction invalid pension. Even though he wrote several letters to the opposite parties-authorities, the authorities maintained stony silence and did not take any steps. The authorities woke up from their slumber only when they received legal notice in the year 1991. By Annexure-6 dated 1.4.1992, the Record Officer intimated the petitioner that if he was so advised, he might prefer an appeal. Accordingly, an appeal was preferred in 1992 which was dismissed simply on the ground that it was barred by time.

4. Pension is a recurring cause of action and, strictly speaking, it cannot be said that the claim for pension has become time barred. Even otherwise, prior to declaring the petitioner invalid he was examined by the Medical Board of the Army. The proceedings of the Medical Board are as per Annexure-R/2 to the counter affidavit. The said proceedings clearly reveal that the petitioner did not suffer from any disability before joining the Army. It also reveals that the Medical Board constituting Army Doctors certified and recommended that disability pension was admissible to the petitioner under Rules and it should be sanctioned to him. The observation made by the Medical Board is quoted below:

I certify that the particulars given are correct as far as can be ascertained from the records of the Regiment/Corps/Ship/Establishment/Air Force and recommend that disability pension admissible under rules may be sanctioned.

5. In view of the aforesaid categorical recommendation made by the Medical Board of the Army and the fact that the disability of the petitioner was caused in course of his service and aggravated while he was discharging his duties, rejection of the claim for sanction of disability pension only on the ground that the said application was filed at a belated stage, is not justified. According to the report of the Medical Board, the petitioner was hale and hearty and found medically fit when he joined his service. He suffered in course of his service and was discharged. The Medical Board recommended that he was entitled to disability pension. Thus it was incumbent on the Army authority, which is supposed to be an ideal employer, to *sou motu* release the disability pension without waiting for an appeal. Law is well settled that pension is no more a bounty but it is the right of the employee.

6. In view of the materials available on record and position of law, I hold that the opposite parties-authorities acted illegally in rejecting the Appeal filed by the petitioner for grant of disability pension, only on the ground that the same was filed at a belated stage. The said ground is not sustainable in law. Accordingly, I have no hesitation to allow this Writ application and direct the opposite parties-authorities to sanction disability pension as recommended by the Medical Board and as admissible in consonance with law and disburse the same to the petitioner at an early date, preferably within a period of six months from the date of communication of the order.