
(1994) 10 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 842 of 1993

Ran Singh Jaggi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Air Force Act, 1950 — Section 80
Constitution of India, 1950 — Article 226, 227

Citation : (1995) 2 ShimLC 152

Hon'ble Judges : Lokeshwar Singh Pant, J; Bhawani Singh, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; Kuldip Singh Rathore, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Pant, J.—The Petitioner through this writ under Articles 226/227 of the Constitution of India prays for quashing/setting aside the decisions taken by the Respondents on October 21, 1988 (Annexure PA) and 27th December, 1989 (Annexure PC) by which his claim for disability pension has been declined. He also prays that direction be issued to the Respondents to release his pension. The facts may briefly be enumerated.

2. The Petitioner was appointed an Airman in the Indian Air Force on September 10, 1954 and was promoted as LAC in or about 1956 and was further promoted as Corporal in 1959. He served in the Indian Air Force till 2-10-1959 when he was medically found unfit and was discharged from the service on October 3, 1959. When the Petitioner was recruited as an Airman, he was in perfect health and nothing either latent or patent was found in his medical examination. The disability the Petitioner suffered during his service in the Indian Air Force was directly attributable to such service rendered by him.

3. The Petitioner was allowed disability pension till July 1988, whereafter the same was discontinued on the grounds that the disability was assessed less than

20%. The Petitioner made representation to the authorities concerned. He was informed through communication dated 21-10-1988 (Annexure PA) that he is entitled to prefer an appeal against the decision of the authority within a period of 6 months. Accordingly, he submitted his appeal (Annexure PB) and the copies of the representations are placed on record (Annexures PD and PE). On April 1, 1990 through communication (Annexure PF) endorsed to the Petitioner the authority informed him that he would be allowed service element to a minimum of Rs. 375. Thereafter, the Petitioner again submitted his representation and finally got issued notice u/s 80 (Annexure PH) reiterating his claim but of no avail. Lastly, through communication (Annexure PJ), the Petitioner requested Union of India to supply him the relevant pension regulations and he was informed through communication (Annexure PK/1) that according to the Army Order No. 180/74 the pension regulation can be supplied only when prior permission has been granted by Respondent No. 2. Again the Petitioner immediately approached Respondent Nos. 2 and J through letters (Annexures PL, PM and PN) but of no avail. Ultimately, the Government of India, Ministry of Defence, Department of Military Regulations and Rules on 19th March, 1993 (Annexure PO) informed the Petitioner that he may approach the Air Headquarters directly in this regard. Again the Petitioner submitted his request through communication dated 31-3-1993 (Annexure PP) to Respondent Nos. 2 and 3 for supply of Air Force Pension Regulations Part I and II, but no response was received by him. After having failed to obtain the copies from the authorities-concerned, the Petitioner has approached this Court for the grant of pensionary benefits as stated in the earlier part of the judgment.

4. This petition is contested by the Respondents by filing reply on the affidavit of Shri Bennoy Andrews, Flying Officer in 25 SQN Air Force, Chandigarh. The Respondents have admitted that the Petitioner was enrolled in the Indian Air Force on 10th September, 1954 and was classified as LAC on September 1, 1957 and not in 1956 as contended by the Petitioner. It is also admitted that he was promoted to the rank of substantiate Corporal on 10-5-1959 and he was medically boarded out on 3rd October, 1959 under the provisions of Air Force Act (Rule) Chapter III Para 13 Clause (iii) as "being found medically unfit for further service in the IAF" as a case of "Pulmonary Tuberculosis" and to be reviewed after a year. Although, in the written statement, it is admitted that the disease arose as a result of lowered resistance to infection due to stress and strain of Air Force Service and was found attributable to service and accordingly, he was awarded disability pension till July 8, 1988 and ultimately the same was stopped by CDA (Pension), Allahabad when disability was reassessed as nil. It is further contended that thereafter the Petitioner was not entitled for pension as he has not completed 10 years of service. He was advised to prefer a claim for special gratuity and a sum Rs. 640 on that account has been remitted to the Petitioner.

5. We have heard the learned Counsel for the parties and perused the, record of the case.

6. Shri A.K. Goel, learned Counsel for the Petitioner has submitted that the Petitioner was boarded out on medical grounds which disease he suffered during his service in the Indian Air Force and was directly attributable to such service rendered by him and in such an eventuality, the Petitioner is entitled for grant of disability pension. In support of his contention, he has strongly relied upon decisions like State of Kerala and Others Vs. M. Padmanabhan Nair, ; Ex. Hav/Clk Wishwa Nath v. Union of India and Ors. 1991 (5) SLR and Joginder Singh Ex. Lt. v. Union of India and Anr. 1994 (4) SLR 409.

We have perused these decisions. In State of Kerala (supra) the apex Court held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of that Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. In Ex-Hav/Clk Wishwa Nath's case (supra) the dispute before the learned Single Judge of the Punjab and Haryana High Court was that whether the disease which led to the discharge of the Petitioner in that case was ordinarily deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces.

7. In the present case this controversy is not in dispute as the Respondents have admitted in their written statement that the Petitioner suffered disability due to stress and strain of Air Force Service and was found attributable to service.

8. In Joginder Singh's case (supra) the learned Single Judge of Punjab and Haryana High Court has found that except for one report the learned Counsel for the Respondents has not been able to point out any other evidence on the file which may show that the extent of disablement has been assessed at less than 20%.

9. The sole question for determination in the present writ petition is that after the Petitioner was found medically unfit on account of the disease suffered by him and such disease was found attributable to the service, in such situation can the Petitioner be deprived of his legitimate claim of pension on the ground that his disability was found nil after one year of such discharge. The Petitioner was admittedly, granted disability pension till July 8, 1988 and thereafter, the same was stopped by the Controller Defence Accounts (Pensions) at Allahabad for the reason being disability assessed less than 20% (nil). This reason of the authorities concerned is not sustainable. It has been found in letter (Annexure PC) that the Appellate Medical Officer has determined the disability of the Petitioner front 20% to 6.10%. He was to continue to get disability pension if the disability was 20% or more. In our considered view, the authorities concerned did not apply their mind to the facts of the case. All that is relevant in the present case was to see that the disability was suffered by the Petitioner during the course of his service and was attributed to the Air Force or aggravated due to Air Force Service. The Petitioner herein had served the Indian Air Force for 5

years and had been discharging his duties to the best of his capabilities without any complaint. He was found, medically fit at the time of recruitment. The authorities have granted him disability pension from the date of his discharge till July 1988 irrespective of the ground that his disability was more than 20%. Once it is admitted that the Petitioner suffered disability while he was in service, which disability rendered him incapable of serving the Air Force even though to the extent of 20% while so serving. In such a case the authority should have leaned in favour of Petitioner in interpreting the relevant rules. In Ex. Sepoy Chatter Singh v. Union of India and Anr. 1994 (1) SLR 465, the learned Single Judge of the Punjab and Haryana High Court has observed thus:

...Once Petitioner was discharged from service increase or decrease in his disability could not possibly be influenced by service matters but could that be a ground to deny him the benefit of disability pension if he had actually suffered disability during service and which disability was admittedly attributed to Army Service. In my considered view, the authorities concerned did not apply their mind at all and far from examining the Rules governing the field even made departure from common sense All that is relevant was to see that the disability was suffered during the course of service and was attributed to the Army or was aggravated due to Army Service as also the extent of the same whether it was below 20% or less than 20%. The fact that it was on account of natural cause or was constitutional disease was wholly immaterial.

As mentioned above, the authorities dealing with the case of Petitioner dealt with the matter in a very casual manner which it was lease expected to do as Petitioner herein had after all served the cause of the Nation and had rendered himself incapable or had become disabled even though to the extent of 20% or more while so serving. In such a case, even if the rules could be interpreted both ways, the Authorities should have leaned in favour of Petitioner but far from that the rightful claim of Petitioner was denied on such ground which even learned Counsel appearing on behalf of Respondents could not defend.

10. The rightful claim of the Petitioner could not be denied on such grounds which cannot be defended by the Respondents. The action of the Respondents in declining the disability pension to the Petitioner is not based on any material evidence on record. The Petitioner is still under the disability as may be shown in Annexure PC and the contention of the Respondents that the disability is nil is contrary to the material on record. In the facts and circumstances of the case action of the Respondents in declining disability pension to the Petitioner is grossly harsh, arbitrary and unfair.

11. For the foregoing reasons, this writ petition is allowed. The impugned orders dated October 21, 1988 (Annexure PA) and December 27, 1989 (Annexure PC) are set aside. The Petitioner shall be entitled to the payment of arrears of the pension alongwith interest at the rate of 12% per annum from the date of accrual till the date of actual payment. He also deserves the cost of this petition which is assessed at Rs. 2,000.