

(2008) 05 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2028 Of 2004

Ranbir Singh

APPELLANT

Vs

UOI and others.

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Citation : (2008) 3 SCT 478 : (2008) 6 SLR 225

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : Ajay Sharma, GS Wazir, Advocates appearing for the Parties

Judgement

Nirmal Singh, J.—Petitioner who came to be enrolled in the army on 28th of March '79, was invalidated out of service on 19th of Feb '86,

after rendering six years, ten months and 23 days of service. He was placed in low medical category BEE (Permanent) and the disability from

which he was suffering was detected as Sick Sinus Syndrome (Brady Cardia). The disability of the petitioner was assessed at 30%. The case of

the petitioner was forwarded to the office of Controller of Defence Accounts (Pension), Allahabad, but the same was rejected on the ground the

disability suffered by the petitioner is not attributable to military service. The said rejection of the claim of the petitioner by the respondents is the

subject matter of challenge in the present petition.

2. The grievance of the petitioner is that at the time of enrolment, the petitioner was not suffering from any such disease. It is stated that he

remained in service for more than six years and during the said period he was posted at different stations and it was due to the regular changed

climatic conditions that the petitioner developed the disease namely Sinus Brady

Cardia, and therefore, the same cannot be said to be a disease not attributable to army service. It is further stated that the disability of the petitioner has been assessed at 30%, and as such, in accordance with the Pension Regulations for the Army, in case the disability is assessed at more than 20% and the same is attributable to army service, then the disability pension cannot be denied by the respondent Union of India.

3. Respondents in their objection have stated that the petitioner was discharged from service on account the aforementioned disability in terms of Regulation 173 of Army Pension regulations 1961 (PartI). It is stated that the Medical Board had assessed the disability of the petitioner at 30% but the same was found not attributable to army service. It is further stated that the concerned Unit of the petitioner had recommended the case of the petitioner for retention in service but the same was not accepted by OIC Records. The case of the petitioner was accordingly forwarded to the Pension Sanctioning Authority at Allahabad, but the said authority rejected his claim on the ground that the disability of the petitioner is not attributable to army service. It is thus stated that the petitioner cannot be allowed the benefit of disability pension. The writ petition is also sought to be dismissed on the ground of delay and laches.

4. I have heard learned counsel for the parties and perused the record which was produced by the learned counsel for the respondent Union of India.

5. Whether a disability suffered by an army personnel which leads to his invalidation out of army service, when no note of it is made at the time of his enrolment can be termed to be a disability attributable or aggravated by military service is an important question which is to be taken note of.

No doubt, the decision in this regard taken by the Medical Board has to prevail but the method and manner in which the Medical Board

proceedings are initiated, the same casts doubt so far as the decision in this regard is given by the said Board. There can also be no doubt that

there are some diseases which cannot be detected by way of normal medical investigation but in case a disease is mentioned to be constitutional in

nature, then for arriving to such a conclusion, the Medical Board has to take into consideration the past history of the concerned army personnel

relating to his childhood, family background, heredity characters, body

adaptation to different climatic factors etc., and in case no detail in this regard is given by the Medical Board in its opinion, then the simple mentioning that the disease is constitutional in nature, can be said to be an opinion which is without any basis and thus can be termed as a doubtful opinion as has been expressed by the Medical Board in the present case.

The Medical Board in its proceedings under the heading "'Opinion of the Medical Board'" in column 'd' has simply mentioned "'constitutional disability not connected with service'". There are, however, no reasons given by the Medical Board in reaching to the aforesaid conclusion.

Therefore, the disease of Sinus Brady Cardia from which the petitioner suffered and which led to his invalidation out of service, cannot be said to be a constitutional disease in the absence of a proper reasoning given by the Medical Board.

6. So far as the question as indicated above i.e. whether a disease of which no note is made at the time of enrolment of an army personnel which leads to his invalidation out of service is concerned, I am of the opinion that normally such a disease would be deemed to have been aggravated due to military service unless sound reasoning is given in this regard by the Medical Board that the disease is constitutional in nature. In expressing such an opinion, I am supported by the judgment rendered by the Karnataka High Court in the case of *Ex.Naik M.S. Pemmaiah v. Union of India*, 1998(3) SCT 755. In the said case, the concerned army personnel was suffering from Schizophrenia. The Karnataka High Court was of the view that if a person was not suffering from the disease when he joined the service and when there was no entry that the army personnel was suffering from any disorder of disability, then it is to be presumed that the disease had occurred on account of stress and strain of army service and the same is attributable to it.

In *Union of India v. Rattan Lal*, 1999(2) SCT 39, a Division Bench of this Court while allowing the disability pension, observed as under :

- i) That in case mention is not made regarding the disease or disablement at the time of entry in service, then it is to be presumed that the disability occurred during the course of service;
- ii) that the disability would be on account of stress and strain of army service.
- iii) if the competent authority is to disagree with the finding recorded by the

medical board visavis the disability or the percentage thereof, the matter should be referred to the Medical Board;

iv) as there is no finding recorded that the respondent writ petitioner was suffering from a disease which could not be detected at the time of entry into service, the appellant Union of India cannot take a summer sault and come to a contrary conclusion;

v) delay in approaching the court is irrelevant".

7. In the case in hand, as noticed above, there was no mention of such fact that the petitioner was suffering from Sinus Brady Cardia at the time of his enrolment into service. Even the Medical Board, as indicated above, has not given any reason to show that the said disease is constitutional in nature. Therefore, applying the test of the aforesaid decisions to the case in hand it can be said that the disability suffered by the petitioner is not constitutional in nature and has occurred due to the stress and strain of army service.

8. In Annexure III to Appendix II of Army Pension Regulations 1961, a list of disease has been shown which are affected by the climatic conditions, stress and strain, dietary compulsions, training, marching and prolonged standing, environmental diseases, diseases affected by altitude and those affected by service in submarines and in diving. Under head "J", the diseases which are normally not affected by service have been given.

A perusal of the same shows that there is no mention of the disease "Sinus Brady Cardia" from which the petitioner suffers. Therefore, taking into consideration the same, it cannot be said that the aforementioned disease cannot occur due to stress and strain of army service. Thus, if the Medical Board in the present case was of the opinion that the diseases from which the petitioner suffered is a constitutional in nature, then it should have given reasons in support of its conclusion which has not been done.

Even otherwise, in para 7 of the writ petition, petitioner has taken a specific stand that during his service tenure more than six years in the army, he remained posted in different stations and it was due to the changed climatic conditions that he developed the said disease. To the said paragraph, there is no denial by the respondents and therefore, the same would be deemed to have been accepted.

9. So far as the stand of respondents that the writ petition suffers from delay

and laches is concerned, in this regard, it would be apt to state that no doubt, delay and laches is one of the factor which has to be taken into consideration by this court while exercising power under Article 226 of the Constitution but the pension being a recurring cause, this power has to be exercised judiciously and while dealing with such like matters, the courts have also to see the facts and circumstances and assess the case on merits also as has been laid down by the Apex Court in the case reported as Shiv Dass v. Union of India and others, 2007(2) SCT 72 : Mill LJ 2007 SC 123. In the present case, the authority have not considered the case of the petitioner properly. This is apparent from the stand taken by the respondents itself wherein as noticed above, it has been mentioned that the case of the petitioner was recommended by his concerned unit for retention of the petitioner in service but the said recommendation was rejected by OIC Records. The petitioner had also filed a petition before the authorities concerned and served a legal notice also. Therefore, if cannot be said that the petitioner had slept over the matter and had not approached the respondent authorities. The plea of delay and laches taken by the respondent Union of India, in my view, thus cannot be accepted.

10. For the reasons mentioned above, this petition is disposed of with the following directions :

1. That as there was no mention that the petitioner was suffering from the disability namely Sinus Brady Cardia at the time of his enrolment, and as the said disease has not been mentioned as a disease not affected by the service in the Appendix aforementioned, the same would be deemed to be a disease which has occurred due to the stress and strain of army service;
2. that as the disability of the petitioner has been assessed at 30% by the Medical Board, he is held entitled to disability pension, which shall be released in his favour by the respondent Union of India within a period of two months from the date, a copy of this order is made available to respondents by the petitioner;
3. That the petitioner is also held entitled to arrears of disability pension along with interest at the rate of 9% three years prior to the filing of present petition. The said arrears would also be released in favour of the petitioner with the same period as mentioned above.
4. that the plea of delay and laches as taken by the respondents is irrelevant in

the present case.

5. That in cse, the disability pension and the arrears as indicated above, are not released within the stipulated period aforementioned, the petitioner

shall be entitled to interest at the rate of 14% on the arrears and this enhanced interest shall be payable by the person on whose account the delay

occurs.

6. Disposed of accordingly.

7. Petition allowed.