

(1997) 11 KL CK 0032
In the High Court Of Kerala
Case No : W.A. No 388 of 1997

Ravi, C.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 173

Citation : (1997) 11 KL CK 0032

Hon'ble Judges : T.V. Ramakrishrtan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : M.P. Ashok Kumar, for the Appellant; Thomas Mathew Nellimoottil, A.C.G. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.N. Patnaik, J.—The Petitioner in O.P. No. 2026 of 1993 has preferred this writ appeal against the judgment dated 6th January 1997 rendered by a learned Single Judge of this Court. By the impugned judgment, the learned Single Judge dismissed the writ petition wherein the Petitioner, an ex-military personnel prayed for a direction to the Respondents Union of India and Ors. s-to grant disability pension under the relevant rules.

2. The Petitioner joined in the Artillery Regiment of the Military Service as a Gunner on 1st October 1980. He was discharged from service with effect from 27th July 1989 on the ground that he was unfit to continue in service as he suffered from "Generalised Seizures". The Petitioner/Appellant claimed disability pension and made representations to various authorities of the department. Ultimately, his representations and appeals to the higher authorities for grant of disability pension were rejected. It is contended by the Appellant that he has suffered from the said disease while serving in the Army and it is attributable to military service.

3. In the counter-affidavit filed by the Senior Record Officer, Artillery Records, on

behalf of all the Respondents, it is stated that the disability namely "Generalised Seizures." from which the Petitioner suffered while rendering his service in the Army and on which his invalidment is based is not attributable to military service. It does not fulfill the condition, namely, "it existed before and has remained aggravated thereby". It is stated that for the above reasons disability pension is inadmissible. However, an amount of Rs. 7,990 on account of invalid gratuity and Rs. 6,345 on account of D.G.R.G. and a sum of Rs. 717 on account of M.O. had been paid.

4. The learned Single Judge, on a consideration of the counter-affidavit, held that the contention advanced by the Petitioner has been sufficiently considered by the Minister of State as per Ext. P-6 and there is sufficient application of mind by the first Respondent, namely, Union of India, and the Respondents have rightly found that the disease is not attributable to military service.

5. It is contended by the learned Counsel for the Petitioner that a mere statement by a doctor of the Army without anything more cannot disentitle the Petitioner to claim disability pension under Rule 173 of the Pension Regulations of the Army, 1961 and Pension Entitlement Rules.

Learned Counsel for the Respondents contended that the opinion furnished by the Medical Board being not challenged to be incorrect on any valid ground, it was for the Petitioner to establish that the disease which he has suffered from is attributable to or aggravated by the military service. Hence, it is contended that he is not entitled to the relief claimed.

6. In view of the rival contentions of the parties, the only point for consideration is whether the disease is attributable to or aggravated by the military service so as to make the Petitioner entitled to get the disability pension.

7. In Civil Appeal No. 164 of 1993. Sapper Mohinder Singh v. Union of India, disposed of on 14th January 1993, the Supreme Court had the occasion to consider such a question. Similar such contention was taken by the Union of India against the claim of disability pension when an army personnel who sustained injuries during the tenure of his service was invalidated by the Medical Board. No document whatsoever supporting the reasons for the opinion of the Medical Board were produced in the Court. In that context, the Supreme Court held that "no details of the consultation has been disclosed by the Respondent nor it is claimed that the Appellant has been re-examined by any higher medical authority. We are not prepared to act on the vague allegations in the counter-affidavit filed by the Respondents."

In this case also there is no document showing the reason for which the medical authorities who examined the Appellant found that the injury is not attributable to the military service or that it was not aggravated on account of it.

8. In Union of India (UOI) and Another Vs. Baljit Singh, the law on this subject has been laid down by the Supreme Court as follows:

He further contends that as per the medical report the injury was sustained by him while he was in service and that, therefore, it has been presumed that it was during service and accordingly must be attributable to military service. On a consideration of the rules, we think that the contention of Shri Malhotra merits acceptance. It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from Clauses (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated there under require to be observed. Clause (c) provides that if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service.

It is made clear in the aforesaid judgment that it has to be affirmatively established that the disease is not attributable to military service or has not been aggravated by it. In our opinion, the burden of establishing it lies on the Respondents military authorities. This is because when the Petitioner/Appellant was recruited and enrolled into the military service he was found physically and mentally fit. Nearly after 8 years of service, he suffered from this disease. No extraneous cause has been shown for having developed the said disease later which might have remained suppressed at the time of entry into military service.

9. This Court, in *Madhavi Amma v. Union of India* 1991 (2) KLT 545 laid down as follows:

In the present case admittedly the deceased died of cardiac arrest while on duty because it is so admitted in the counter-affidavit also. No evidence have been adduced to show that the death was occurred for reasons not attributable to his duty. It has to be presumed that the case of death of the deceased was attributable to his employment (Military Service) or aggravated by military service. The Respondents have not produced any material to show that the case of death was not connected with military service or aggravation is not attributable to the service.

The facts alleged in the reported decision are similar to the facts of this case. The correctness of this decision is not shown to have been challenged before any appellate authority.

10. In another case of similar nature, *Ramachandran Nair v. The Controller of Defence Accounts* ILR 1996 (1) Ker 168 this Court reiterated the aforesaid principle. It is as follows:

Petitioner was physically and mentally found fit to enter military service. It was only on the basis of the medical examination and Ors. tests he was enrolled on 21st July 1964. While he was working in the workshop in Siliguri he developed anxiety state. That state was the result arisen from the service in military. If the illness has any casual connection with the service conditions, then the said disability should be considered as one attributable to military service. No Medical Board certified with reasons that the disability now found on the Petitioner was not attributable to or aggravated by military service. In such a situation the disability which resulted in the discharge of the Petitioner from military service was one attributable to the military service. Consequently, he is entitled to the disability pension from the date of discharge.

The law laid down in the aforesaid decisions of this Court has been consistently followed in Ors. case. The learned Counsel for the Petitioner also produced some unreported decisions of this Court which laid down the same principle as are laid down in the reported decisions. We do not find any reason to differ from that. In this case, it is apparent that the Petitioner/Appellant suffered from the disease while he was in military service. It has not been shown by the Respondents by adducing relevant evidence that it is not attributable to or aggravated by military service. We are, therefore, of the view that the impugned judgment cannot be sustained in law.

11. For the reasons stated above, the writ appeal is allowed. The Respondents herein are directed to grant disability pension to the Petitioner/Appellant as per the rules. No costs.