

(2013) 02 DEL CK 0309

In the Delhi High Court

Case No : Writ Petition (C) No. 8763 of 2011

Ravinder Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) 203 DLT 64 : (2013) 1 ILR Delhi 687

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : R.S. Kalkal, for the Appellant; Sachin Datta, CGSC with Mr. Dinesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the instant petition, the petitioner assails an order dated 1st September, 2011 whereby his OA No. 522/2010 seeking grant of disability pension under the provisions of Regulation 173A of the Pension Regulations for the Army, 1961 was rejected by the Armed Forces Tribunal. The undisputed fact giving rise to the present petition to the extent necessary and briefly noticed hereafter. The petitioner has contended that he was enrolled into the Indian Army on 1st October, 1990 and was thereafter discharged on the 31st January, 2001 on the ground that he was awarded four red ink entries in his service record on account of misdemeanours for which punishment was also imposed thereon.

2. The case of the petitioner is that he was found medically unfit by the Medical Board in the year 1997 and was placed in the low medical category but was retained in service. The petitioner was medically examined by a Medical Board held on 16th March, 2000 which had opined that the petitioner was suffering from partial seizure (RT) with generalisation & acute lumbago and was found to be having 30% disability. A second medical examination of the petitioner conducted on 16th September, 2011 confirmed the said diseases and opined the percentage of the petitioner's disability of 20%.

3. Learned counsel for the respondents has contended that given the above narration, despite the fact that the petitioner was placed in a low medical category in the year 1997, he was retained in service and was assigned duties even thereafter. It is urged that the petitioner cannot validly contend that his disability was attributable to military service.

4. Mr. R.S. Kalkal, learned counsel for the petitioner has drawn our attention to the opinion of the Medical Board dated 23rd January, 1998 wherein, though the board has held that the disability of the petitioner was not directly attributable to the conditions of service, but in para 5 had opined that even if it was not directly attributable to service, it was aggravated "due to stress and strain of service conditions".

The petitioner places reliance on this finding of the Medical Board in support of his claim and entitlement to award of disability pension.

Reliance has also been placed on the provisions of Regulation 173 & 173A of the Pension Regulations for the Army, 1961 in support of the claim.

5. This claim of the petitioner was raised for the first time in the year 2004. The petitioner also filed a petition before the Armed Forces Tribunal being OA No. 522/2010 which came to be rejected by the Armed Forces Tribunal by its order of 1st September, 2011. Aggrieved thereby, the present challenge has been laid.

6. Before us, Mr. Sachin Datta, learned counsel for the respondents has staunchly contested the claim of the petitioner contending that the petitioner was not discharged on account of medical disability but had been boarded out for the reason that he was awarded four red ink entries in his service record and that he was disentitled to the benefit under Regulation 173-A. It is contended that the case of the petitioner is not even covered under the provisions of Regulation 173 of the Pension Regulations for the Army.

7. In order to adjudicate on the rival contention, we may usefully set out the provisions of Regulations 173 & 173-A of the Pension Regulations for the Army, 1961 which read as follows:-

Primary conditions for the grant of disability pension 173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.

Individuals discharged on account of their being permanently in low medical category 173-A Individuals who are placed in a lower medical category (other than "E") permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the

purpose of the entitlement rules laid down in Appendix II to these Regulations.

8. It is evident that these two regulations apply if a person is invalidated out of service on account of a disability attributable to military service or because no alternative employment in their own trade category suitable to their low medical category could be provided. Given the absolute mandate of Regulation 173, the petitioner certainly cannot place any claim thereunder. So far as Regulation 173-A is concerned, the case of the petitioner also does not fall under any of the three categories to which the regulation applies. The petitioner was continued in service despite his being in a low medical category. His discharge was not on account of the disability but on account of his having been found undesirable after repeated disciplinary proceedings against him in which he was found guilty and was duly punished.

9. The Armed Forces Tribunal has concluded that the case of the petitioner is a simple case of discharge and not a discharge on account of the lower medical category. The Regulation 173-A as captioned clearly applies only to individuals discharged on their having been placed in permanent low medical category. In the view we have taken, we are supported by the pronouncement of this court which is in decision dated 16th November, 2006 in WP (C) No. 16247/2004 case Ex. Sepoy Raghbir Singh vs. Union of India & Ors. wherein, on similar facts, the court held that such a person would not be entitled to disability pension. Learned counsel for the petitioner has, however, placed reliance on the pronouncement of the Supreme Court reported at Ram Pal Singh Vs. Union of India and Others, . in support of the petitioner's claim. We find that in this case, the petitioner was boarded out on account of injury which was suffered by him during the Indo-Pakistan conflict. The case did not involve Regulation 173 or 173A of the Pension Regulation for the Army. There is nothing on record to show that Ram Pal Singh was kept in service despite his having suffered the injury during the Army conflict. The case is clearly distinguishable on facts. Even otherwise the judgment rendered in that case does not lay down any absolute proposition thereof.

We do not see any reason to differ with the view taken by the Armed Forces Tribunal.

The writ petition is dismissed.