
(2009) 03 P&H CK 0151
In the Punjab And Haryana At Chandigarh

Samund Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 154 PLR 211

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajai Lamba, J.—This civil writ petition has been filed under Article 226 of the Constitution of India, praying for issuance of writ in the nature of mandamus directing the respondents to grant disability pension to the petitioner and further for quashing order dated 27.5.1991 (Annexure P-3), whereby appeal of the petitioner, praying for disability pension, has been rejected.

2. It has been brought out that the petitioner joined the Indian Army on 6.8.1974. It has been pleaded that the petitioner became victim of circumstances during Operation Bluestar. The petitioner was posted at Hashimara. There was mass desertion and mutinous misconduct in various regiments comprising of Sikh troops. The petitioner was also blamed for absenting himself without leave and joining in mutiny in the Military Forces of India on 10.6.1984. Although the petitioner was brought back after a short while, however, on account of misconduct, the petitioner was tried by General Court Martial for absenting without leave and was, accordingly, awarded punishment of 12 months rigorous imprisonment (R.I) in Military reformatory. The petitioner, however, was retained in service.

3. It has been further pleaded that on account of tension and the circumstances given above, the petitioner became a case of essential Hypertension. The petitioner had been hospitalized and categorized as "BEE" (Permanent) at Military

Hospital, Bikaner. It has been argued that on account of the rigors of Military service and on account of the proceedings initiated against the petitioner, at the age of 32 years, the petitioner became a victim of the disease.

4. The petitioner was sent for recategorization in January, 1988. The petitioner was graded as "BEE" (Permanent) and was rendered unfit for further Military service. On account of Permanent Low Medical Category, the petitioner was discharged. Release Medical Board of the petitioner was held on 17.2.1989. On account of Hypertension, the petitioner was found to have suffered 40% disability. The petitioner was not given disability pension. The petitioner preferred an Appeal on 13.6.1990, which was finally decided vide impugned order dated 27.5.1991 (Annexure P-3). The reason given in not allowing the disability pension is that the disease suffered by the petitioner was not attributable or aggravated on account of Military service. Learned Counsel for the petitioner has argued that it was only on account of the Military service and the circumstances faced by the petitioner during service that the petitioner has suffered the disability on account of which he has been boarded out. The petitioner is, accordingly, entitled to be paid disability pension.

5. Learned Counsel for the respondents has pointed out that the disease has been found constitutional in nature and not attributable or aggravated by Military service. Learned Counsel states that the case of the petitioner is covered against him by the judgment of the Hon'ble Supreme Court of India reported in Union of India v. Surender Singh Rathore 2008(2) RSJ 566. It has been contended that the petitioner has not challenged the opinion of the Medical Board and, therefore, the opinion of the Board has to be accepted.

6. I have heard learned Counsel for the parties and gone through the relevant record.

7. The reason assigned for denying disability pension is that "disease is constitutional in nature". In case, the petitioner was aggrieved by the said opinion, the petitioner was required to challenge the same by way of placing some other material before this Court, which would indicate that, in fact, the disability was attributable to Military service. This has not been done. I am of the opinion that the case of the petitioner is covered by the judgment rendered in Surender Singh Rathore's case(supra). Reference may be made to paras 6 & 7, which reads as under:

6. In Union of India (UOI) and Another Vs. Baljit Singh, , this Court had analysed Rule 173 of the Pension Regulations. It was observed that where the Medical Board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court's direction to the Government to pay disability pension was not correct. It was inter alia observed as follows:

6. ...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 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 ample clear from Clause (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder required 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 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 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.

7. The position was again re-iterated in Union of India (UOI) and Others Vs. Dhir Singh China, Colonel (Retd.), . In para 7 it was observed as follows:

7. That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted.

8. Learned Counsel for the petitioner has not been able to distinguish the aforesaid judgment.

9. In view of the above, this petition is dismissed.