
(2007) 11 RAJ CK 0004
In the Rajasthan High Court

Sanwal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2007) 11 RAJ CK 0004

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—Having heard learned Counsel for the petitioner and having perused the material placed on record. his Court is clearly of opinion that the claim for disability pension as sought to be asserted by the petitioner remains totally bereft of substance; and this writ petition does not merit admission.

2. The petitioner has alleged in this petition for writ filed on 11.10.2007 that he was enrolled in the Indian Army on 27.08.1974 in a physically fit condition and after four years of service while being posted in Arunachal Pradesh, due to health problem and on the basis of report of the Medical Board, he was discharged from Army w.e.f. 18/19.10.1978 with reference to Item III (iii) of the Table annexed to the Army Rules of "having been found medically unfit for further service". According to the petitioner, on account of such discharge he was entitled for disability pension but was denied the same; and though he regularly approached the authorities but did not receive any disability pension. The petitioner has averred that he made representations for last 28 years but did not retain the copies of the same; that on 14.09.2005 he sent a written representation to the respondents Nos. 2 and 3 under registered post (Annex.2) and in response thereto received a letter dated 24.09.2005 (Annex.4) denying disability pension without assigning any reason but stating about the earlier order issued in the year 1979 for refusal of disability pension. The petitioner maintains that he had

not received any such previous communication. The petitioner got served a notice through lawyer on 18.09.2007 (Annex.5) and then has filed the present writ petition.

3. With reference to the Army Pension Regulations and several decisions of the Hon"ble Supreme Court and of this Court including those in S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, State of West Bengal Vs. Haresh C. Banerjee and Others, Nathu Singh v. Union of India and Ors. 2003 (1) RLW 632, Emna (Smt.) W/o Late Sakuria v. The Union of India and Ors. 2004 (1) DNJ 238, Ex. Sgt. Tejpal Singh Chauhan v. Union of India and Ors. 2004 (3) WLC 190, Pratap Singh v. Union of India and Ors. 2005 (8) RDD 3161, The Union of India and Ors. v. Pratap Singh Rathore 2007 (3) WLC 630, learned Counsel for the petitioner has strenuously contended that the petitioner having been discharged on medical grounds could not have been denied disability pension; that denial of disability pension is a continuing wrong and such action of the respondent is in breach of Articles 14 and 21 of the Constitution of India. The submissions remain hollow and baseless in the fact situation of the present case.

4. Learned Counsel has referred to the Army Pension Regulations in relation to the claim for disability pension. Regulation 173 provides for grant of disability pension consisting of service element and disability element to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service. Regulation 173A is applicable in relation to the individuals who are placed in lower medical category (other than "E") permanently and who are discharged because no alternative employment in their own trade/category suitable to their medical category could be provided or who are unwilling to accept the alternative employment or who having been retained in alternative employment are discharged before completion of their engagement. Neither of the regulation aforesaid has any application to the case of the petitioner.

5. It is not borne out from anything on record if the petitioner suffered from a disability attributable to or aggravated by military service as referred by Regulation 173; or that he was placed in lower medical category and was discharged for the reasons envisaged by Regulation 173-A. The petitioner had been ischarged, admittedly, for "having been found medically unfit for further service". The petitioner has nowhere pointed out the nature and cause of disability that rendered him medically unfit for further service; and there is nothing on record to co-relate the case of the petitioner with the claim for disability pension under the said Regulations. There is no quarrel with the proposition as available in the decisions relied upon by the learned Counsel for the petitioner that if a person or family is entitled to pension/family pension/ disability pension, the same cannot be denied but then, in the present case, there is conspicuous omission on record about the description of disease and disablement of the petitioner to consider if the same has any co- relation with the military services. Merely the fact of discharge from Army on medical grounds

is not sufficient to establish a claim for disability pension; and such a claim could have been considered only if the case answered to the basic conditions envisaged by the said Regulations for the purpose of grant of disability pension.

6. Apart from the fact that the petitioner has chosen not to describe his disablement, and has not come out with a specific case that his disability was referable to military services, indications are available on record that his disability was constitutional in nature and not related to the military services. The respondents have categorically pointed out in their communication dated 24.09.2005 (Annex.4) that his claim for disability pension was already turned down on 15/16.06.1979 and he was informed accordingly under a registered post letter dated 05.07.1979 with advise to prefer an appeal against rejection of disability pension within six months. The OIC (Records) has stated thus:

Your disability pension claim was forwarded to PCDA (P) Allahabad. PCDA (P) Allahabad has rejected the same, disability being neither attributable to nor aggravated by military service and constitutional in nature and not related to service vide their letter No. G-3/79/3861/II dated 15/16 Jun 79. The fact has already been communicated to you vide this office Regd. Post letter No. 14320806/PPO/DP-16903/Pen-2(c) dated 05 Jul 79 with an advise to prefer an appeal against rejection of disability pension within six months from the date of issue of PCDA (P) Allahabad letter, but you failed to do so within the stipulated period. Hence no disability pension is admissible to you under the existing rules. We sympathise your old age but regret our inability to help you out.

7. The petitioner would deny receipt of any previous communication. In the first place such denial does not inspire confidence, and when examined in the context of the fact that the department has otherwise certified him fit for civil job (Annex.1), there is no reason wherefor the petitioner would not have pursued the matter, if not receiving any communication, at the relevant time in the year 1979. The suggestion of making several representations and not retaining copies thereof, again, does not inspire confidence in the fact situation of this case. It seems that the petitioner having failed to take appropriate steps at the appropriate time has resorted to this litigation at this belated stage taking a chance if his case could be considered without regard to the facts and with reference, in abstract, to the decisions rendered by this Court and the Hon'ble Supreme Court. There appears no reason to consider any interference in this matter at this stage.

8. The writ petition fails and is, therefore, rejected.