

(2005) 03 DEL CK 0082
In the Delhi High Court
Case No : CW 6475 of 1998

Sep. Jai Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Citation : (2005) 119 DLT 66 : (2005) 2 ESC 1355 : (2006) 1 SLJ 256

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : C.P. Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

B.N. Chaturvedi, J.—The petitioner was enrolled as non-combatant in the trade of sweeper in Indian Army on 29th of April, 1964 in the Corps of Electrical and Mechanical Engineers(EME). He accepted combatantisation under the terms and conditions of service laid down in GOI, Ministry of defense letter No.19178/IX/Trg.2(MP)(C)/1 of 16.3/D(AO) dated 31.12.1971 with varied terms of engagement of 18 years of service or on attaining 45 years of age, whichever was earlier. He was discharged from service w.e.f. 1.11.1977(F/N) under Rule 13. (3)(iii)(i) of Army Rules, 1954 on completion of 13 years and 174 days service and on attaining the age of 45 years. The petitioner was placed in low medical category `CEE"(Temp) w.e.f.13.8.1976. He was brought before a Medical Board and was placed in medical category `CEE"(Prmt). His disability `MYLAGIA BACK" was assessed at 33% for two years and was, accordingly, granted disability pension. The same was, however, stopped w.e.f.24.2.1988 by CCDA(P) on Resurvey Medical Board, held in February, 1988, assessing his disability less than 20%. The decision in this regard was, however, communicated to the petitioner in August, 1990 only.

2. The petitioner filed an appeal questioning the assessment of his disability less than 20% by the Resurvey Medical Board. He also requested the Chief of the

Army Headquarters, DGAFMS, (Annexure,P-3), for review medical board but no action was taken thereon. The petitioner, thereafter, by his application No.7121355/JS/Pen dated 18.4.1992 approached the Controller General of defense Accounts(CFDA), R.K. Puram, New Delhi as well but no action was taken by them either.

3. The finding of the Resurvey Medical Board assessing his disability less than 20% is termed by the petitioner as illegal and arbitrary as he was not given any chance to explain his position. He further pleads that the stoppage of disability pension without giving him an opportunity to represent his case was bad in law. According to him, he was granted disability for life and the same could not have been withdrawn. He complains that no review medical board was held by the respondents for more than ten years despite his request in that regard. His further plea is that in any case, even if his disability is assessed below 20%, he would still be entitled to the service element of disability pension in view of Army Regulations 173, 179, 186, 198 and 80 and Appendix II, Part I to the Pensions Rules.

4. The stand of the respondents, in their counter-affidavit, is that as the petitioner was discharged from service on completion of his term of engagement and as he had rendered less than 15 years of service he was not entitled to service element of disability pension and could draw disability element only, in addition to service gratuity under AI 184/69. The disability element was also discontinued by CFDA(P), Allahabad since petitioner's disability was re-assessed at less than 20% by the Resurvey Medical Board. It is added that on a legal notice dated 17.10.1992 from the petitioner, his case, with paradise comments, was forwarded to the Army Headquarters vide EME Record's letter No.7121355/CCT/ND-II dated 18.11.1992 which was, however, after careful examination, in consultation with Ministry of defense rejected vide Army Headquarters letter No.D/12048/294 EME Pens. dated 13.5.1993. The petitioner made several representations thereafter for grant of service element which were suitably replied to informing him that his request for service element could not be acceded to in view of AI 184/69 and para 173 of Pension Regulations.

5. The petitioner is aggrieved by a) non-grant of service element of disability pension and b) on account of discontinuance of disability element of disability pension with effect from 24th of February, 1988.

6. The petitioner was discharged from service w.e.f. 1.11.1977 (FN) under Rule 13.(3)(iii)(i) of Army Rules, 1954 after serving for 13 years and 174 days and on attaining the age of 45 years. Such discharge coincided with completion of his term of engagement.

The grounds stated for denial of service element of disability pension are; firstly, that the petitioner had been discharged from service on completion of his term of engagement and secondly, that he had rendered less than 15 years of service.

7. There is no controversy on the point that the petitioner had suffered disability,

attributable to or aggravated by his military service, before his discharge from service w.e.f. 1.11.1977(FN).

8. Regulation 179 of Pension Regulations for the Army, 1961 provides:

An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years(irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 per cent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.....

In terms of aforesaid regulation, it is evident that irrespective of the fact that the petitioner was discharged from service on completion of term of his engagement, in view of his having suffered disability attributable to or aggravated by military service, he would be deemed to have been invalided out of service entitling him to grant of disability pension consisting of disability element as well as service element from the date of discharge where the degree of disability was 20 per cent or more but service element only if the degree of disability was less than 20 per cent.

9. Regulation 173 clearly provides that disability pension, unless otherwise specifically provided, consists of service element and disability element, and a person who is invalided out of service on account of disability attributable to or aggravated by military service in non-battle casualty, which is assessed at 20 per cent or over. becomes entitled to disability pension.

10. Regulation 186.(2) lays down that an individual, even on ceasing to be entitled to disability element of disability pension from the date it falls below 20 per cent, shall continue to draw the service element of disability pension.

11. Thus, keeping in view the rule position, CCDA(P) was not justified in denying service element of disability pension to the petitioner even on his degree of disability being assessed by Resurvey Medical Board, held in February, 1988, less than 20 per cent. Irrespective of the fact that the petitioner had, on attaining the age of 45 years, completed the term of his engagement, since he had suffered disability attributable to or aggravated by military service, he would be deemed to have been invalided out of service and was, thus, entitled to disability pension consisting of disability element and service element from the date of his discharge.

12. The stand of the respondents in the counter-affidavit that the petitioner was not entitled to service element of disability pension in view of his having not rendered the qualifying service of minimum 15 years, as required under Para 131

of Pension Regulations, appears to indicate that the respondents are labouring under mis-conception that service element of disability pension could be granted only in the event of an individual rendering service for a minimum 15 years. Disability pension, of which service element is a component, is not to be confused with service pension. The stand taken by the respondents appears to be in total negation of the aforesaid regulation position on disability pension. Service pension and disability pension are quite distinct from each other. Rule 132 provides for 15 years of minimum qualifying service (without weightage) actually rendered for earning service pension. Grant of service pension is regulated by regulations u/s II of Pension Regulations dealing with Service pension and Gratuity, while Section IV of the Pension Regulations incorporates provisions relating to disability pension.

13. Regulation 183 of Pension Regulations for the Army, 1961 (Part-I) provides a clear indication that grant of service element of disability pension is not dependent on an individual's having rendered sufficient service to earn service pension. The relevant part of Regulation 183 reads thus:

183. The disability pension consists of two elements viz. service element and disability element which shall be assessed as under:-

Service element

(a) Where the individual has rendered sufficient service pension i.e. actual service is 15 years or more (20 years or more in the case of NCs(E))

(i) Equal to normal service pension relevant to the length of qualifying service actually rendered, plus a weightage of 5 years as given in Regulation 136 (a) or 146.

(b) Where the individual has not rendered sufficient service to qualify for a service pension.

(i)

(ii)

If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority:

The minimum service pension appropriate to his rank (see regulation 180) and group, if any.

In all other cases:

Equal to the service pension as determined per Regulation 136(a) or 146, but it shall in no case, be less than 2/3rd of the minimum service pension admissible to the rank/pay Group. It shall be further subject to a minimum of Rs.375/- p.m.

.....

Disability elements For 100 per cent disablement the rates of disability element will be as follow:-

Rank Disability element JCOs granted Honorary Commission while on the effective list.

JCOs Other Ranks/NCs(E) Rs. P.M. 750/- 550/-

From above quoted clause (b) of Regulation 183, it is abundantly clear that even in cases where an individual has not rendered sufficient service to qualify for service pension, he would still be entitled to service element of disability pension to the extent indicated in (b)(i) or (ii), as the case may be. There is, thus, absolutely no justification on the part of the respondents to have denied service element of disability pension to the petitioner on his discharge from service as he continued to be entitled to the same throughout irrespective of degree of his disability.

14. The other aspect of the matter, which requires attention, pertains to non-payment of disability element of disability pension with effect from 24th of February, 1988 consequent upon Resurvey Medical board assessing the petitioner's degree of disability less than 20 per cent. It appears that the matter remained pending with the CCDA(P), Allahabad until August, 1990 when the petitioner was eventually informed of discontinuance of his disability pension. Thereupon, he filed an appeal/representation questioning the assessment of his disability less than 20 per cent. and requesting for holding a Review Medical Board. He also submitted a medical certificate showing that his disability had, in fact, substantially increased. This he did pursuant to a letter from EME Record vide letter No.7121355/RA-10/Pen dated 8.3.1990 so that a Resurvey Medical Board could be arranged. The factum in regard to submission of such a medical certificate by the petitioner is not controverted by the respondents in their counter-affidavit. In the given circumstances, inaction on the part of the respondents to arrange for a Review Medical Board for a long period of more than ten years is difficult to justify.

15. In his written submissions, the petitioner states that a fresh Resurvey Medical Board was, eventually, held on 11th of July, 2002, which re-assessed the degree of his disability at 30 per cent., whereupon an amount of Rs.465 p.m. has been sanctioned to him on account of disability element only with effect from 11th of July, 2002. In the wake of Resurvey Medical Board held on 11th of July, 2002 assessing petitioner's degree of disability at 30 per cent., it would appear that petitioner's challenge to the finding of earlier Resurvey Medical Board assessing his disability less than 20 per cent. was not unfounded. On a request for Review Medical Board, supported by a medical certificate from a medical practitioner, indicating substantial increase in the degree of disability, being made, the respondents were not expected to treat his request in the manner they did. It is difficult to gather from the record as to what necessitated the respondents to direct a Resurvey Medical Board to re-assess disability of the

petitioner after a period of more than ten years of his request for a Review Medical Board. Perhaps, it was a delayed response on the part of the respondents to the petitioner's request for a Review Medical Board. Had the respondents acted on the request of the petitioner within a reasonable time, the petitioner would not have been denied of his legitimate claim of disability element of disability pension for all these years. The findings of Resurvey Medical Board held in July, 2002 assessing. The petitioner's degree of disability at 30 per cent. tends to vindicate his stand that the assessment of his disability less than 20 per cent. by the Resurvey Medical Board held in February, 1988 did not reflect the correct position. In any case, inaction on the part of respondents in arranging for a Review Medical Board on a request by the petitioner in that regard being made, cannot be countenanced to the disadvantage of the petitioner. However, since the assessment by Resurvey Medical Board held in July, 2002 cannot be treated to be in the nature of a finding of an appellate medical board, the finding of February, 1988 Resurvey Medical Board assessing the petitioner's disability less than 20 per cent, would not stand wiped out. In the circumstances, July, 2002 Medical Board's finding cannot be held to relate back to the date of former Resurvey Medical Board but the same certainly constitutes a basis to hold the petitioner entitled to disability element with effect from a date subsequent to his request for a Review Medical Board after granting allowance of a reasonable time to the respondents for acting on his request in that regard. Accordingly, allowing a margin of six months or so for action on petitioner's request to hold a Review Medical Board, the petitioner is adjudged entitled to disability element of pension as well with effect from 1st June, 1991. Since the petitioner was deprived of his legitimate claim on account of disability pension, including service element, the respondents are liable to compensate him on this account and, accordingly, the petitioner, in addition to the amount payable on account of disability element and service element of disability pension, is held entitled to interest @ 10% p.a. with effect from respective dates the same became payable.

16. In the ultimate analysis, the petition is allowed holding the petitioner entitled to service element of disability pension from 1st of November, 1977, the date of his discharge from service with interest @ 10% p.a. He is also entitled to be paid disability element of pension from 1.6.1991 to 10.7.2002 with interest @ 10% p.a. The payment of entire arrears on both the counts shall be made within two months from the date of this order. The petitioner shall continue to draw service element of disability pension for life, irrespective of degree of his disability. The petitioner is also awarded costs of the proceedings quantified at Rs.25,000/-.