

(2007) 05 RAJ CK 0130
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5416 of 2003

Sepoy Balkaran Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Citation : (2007) 3 WLN 131

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—On being enrolled as Soldier (GD) with Indian Army on 17.03.2002 the petitioner was sent for requisite training and while undergoing the same on medical re-examination he was found suffering "Latent squint". The petitioner was struck off from the strength of basic training regiment from 29.12.2002 being invalidated out of service by medical board, hence this petition for writ is preferred.

2. At the threshold, learned Counsel for the petitioner has confined claim of the petitioner to the extent it relates to grant of disability pension as per the Pension Regulations for Army, 1961 (hereinafter referred to as "Regulations of 1961"). While claiming so, it is contended by counsel for the petitioner that right to get pension to the petitioner accrued by Regulation 173-A and not as per Regulation 173 of the Regulations of 1961, therefore, there was no need to determine as to whether disability occurred was aggravated during military service or attributed to military service. To substantiate the contentions reliance is placed by learned Counsel upon a judgment of this Court in the case of Dutch Ophthalmic Research Centre Vs. Ultramed Private Limited, . holding as under:

13. After careful reading of Regulation 173, *ibid*, makes it precise that a disability pension consisting of service element and disability element irrespective of category be granted only if disease is attributable to or aggravated by army service and is assessed at 20% or over. But, under regulation 173A, where individuals are placed in low medical category (other than category "E")

permanently and are discharged from service because there was no employment available in their own trade/category or/and even an individual is unwilling to accept alternative employment, he is entitled for consideration of disability pension claim.

14. However, so far as condition referred to in Regulation 173 is concerned, the disease must be attributable or aggravated by army service. On examination of the facts of petitioner's case I have already observed the disability was attributable by army service.

15. Case of the petitioner is covered not under Regulation 173 but under Regulation 173A of Army Pension Regulations, and he being placed in low medical category CEE(p) and was discharged from service for the reason that other alternative employment in existing trade/category due to his low medical category, is not available; and besides it was not the case where he was not willing to accept alternative employment and for such individuals, both the conditions attributed (a) disability is either attributable to or aggravated by military service, and (b) it is assessed at 20% or over, are not an application for grant of disability pension under Regulation 173A of Army Pension Regulation to such individuals.

16. Here I may hasten to observe that it has always to be kept in mind and remembered that person does not acquire disability by choice and individual who acquires disability must be protected by deserving sympathetic treatment and not for himself but for his family also; and the protection has to be provided which may serve purpose and object for which disability pension is being extended to individual. Beneficial provision in this regard has been made by respondents providing disability pension to such pensioners/individuals under Army Pension Regulations.

17. For grant of disability pension, object behind it is that those who served defence service and because of disability, when one becomes incapable for army service and alternative employment in his trade/category suitable to his nature of duty is not available and the decision is taken for his discharge from service, individual must be provided with disability pension, and being a beneficial provision by this mode, means can be provided for survival and to maintain his family by way of grant of disability pension.

18. Keeping this object into consideration, in my opinion. Regulations 173 & 173A deals in different sphere. Regulation 173 deals with all kinds of disability where individuals are placed in either of the medical category as defined in classification of disease appended to their Entitlement Rules. But Reg. 173A is only confined to such individual who are placed in low medical category other than "E" (permanently) and discharged from services since no alternative employment in his trade/category is available and in such contingency, after being discharge from any service, some means for livelihood has to be provided to them. In my opinion, petitioner's case for grant of disability pension is

covered under Regulation 173A and not under Regulation 173 as contended by respondents and both the restrictions as referred to in Regulation 173 with regard to disability being (a) attributable to or aggravated in army service, and (b) assessed at 20% or over, cannot be made applicable for grant of disability pension to such individuals who are covered by Regulation 173A of Army Pension Regulations. In the absence of which instead of achieving the object of the beneficial provision it will defeat the very purpose for which provision has been inserted by amendment in 1967.

3. In the case of Pratap Singh Rathore (supra) the Court, on examination, found the disease suffered by the employee attributable to the service rendered with army but from paras 15th and 18th of the judgment it sounds that in the case of invalidation out from service under Regulation 173-A of the Regulations of 1961 there is no need to establish the governing factors for grant of disability pension as prescribed under Regulation 173. The Regulations 173 and 173-A referred above, reads as follows:

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 at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in appendix II. 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.

Note: The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension.

4. I am of the view that the army personnels who are placed in lower medical category (other than "E") permanently due to non availability or non-willingness for alternative employment may be discharged from service in accordance with Regulation 173-A but to receive pension cases of those army personnels have to be examined in accordance with the governing factors given under ordinance 173 those are; (1) disability should be either attributable to or aggravated by military service; and (2) the disability must be a non-battle casualty and assessed at 20% or over.

5. I found myself in disargeement with the law laid down by this Court in the case of Pratap Singh Rathore (supra) to the extent it holds that

both the restrictions as referred to in Regulation 173 with regard to disability

being (a) attributable to or aggravated in army service, and (b) assessed at 20% or over, cannot be made applicable for grant of disability pension to such individuals who are covered by Regulation 173A of Army Pension Regulations.

6. Thus, I feel that by a Larger Bench of this Court following question requires determination:

Whether an army personnel discharged from service under Regulation 173-A of the Pension Regulation for Army-1961, for the grant of disability pension is not subject to the governing factors given under Regulation 173, those are (1) disability should be either attributable to or aggravated by military service; and (2) the disability must be non-battle casualty and assessed at 20% or over?

7. Let the matter be placed before Hon'ble the Chief Justice for appropriate orders.