

(2007) 01 DEL CK 0071

In the Delhi High Court

Case No : Writ Petition (C) No. 1957 of 2004

Sh. Kuldeep Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2007) 01 DEL CK 0071

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Rekha Palli, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This is for the second time that the petitioner has approached this Court under Article 226 of the Constitution of

India claiming relief that the order dated 13.8.1997, Annexure P6 to the writ petition, be quashed and the respondents be directed to grant the

disability pension to the petitioner with effect from 9.3.1994.

2. According to the case pleaded by the petitioner, he joined the Indian Navy on 11.1.1986. At the time of his entry into service, he was found

medically and physically fit in all respects and was in Shape-I. The Invaliding Medical Board was held on 4.2.1994 and on 9.3.1994 the petitioner

was invalided out from service on medical grounds. By that time, the petitioner had already put in more than 8 years of service. The Invaliding

Medical Board assessed the disability of the petitioner at 40%. In 1997, the petitioner was informed and paid a sum of Rs.30,000/- on account of

disability and survival benefits from Naval Group Insurance Fund but the

petitioner was not granted disability pension nor any reasons were communicated to the petitioner. The disability claim of the petitioner which was forwarded to the pension authorities was declined and thereafter the respondents forwarded a letter dated 9.10.1995. However, the same was also rejected. The petitioner preferred an appeal against the order of rejection on 13.8.1997 which was again dismissed by the authorities by passing a cryptic order. The petitioner was found to be suffering from "Maniac Depression Psychosis and Seizure Disorder" which according to the petitioner are the diseases attributable to and/or aggravated by the military services. The disability being more than 40%, the petitioner is entitled to receive the disability pension.

3. Despite grant of number of opportunities, the respondents failed to file any counter affidavit. They were directed to produce records, which were produced before the Court during the course of hearing. The medical records produced by the respondents could usefully be referred to at this stage and the same reads as under:-

Treatment and progress :- The sailor was treated as a case of major depression, alcohol abuse considered as being secondary to the mood state with anxiolytics (sic), antidepressants (Nortryptaline increased up to 100 mg/day) and ECT (6) with which he showed gradual improvement. He is presently asymptomatic. He is active. There is no undue depression or ideation. The sailor is introverted in nature, has slow drive and no motivation for further service.

Opinion and recommendation :- This 25 years old ERA-4 with 3 years of service, an old case of alcohol dependence syndrome was currently hospitalized with features of Manic depressive psychosis (Depression) comprising alcohol abuse, psycho meter retardation, neglect of personal care, lack of drive and energy, depression with early morning worsening of mood, early morning awakening, suicidal ideation and impaired insight.

He has improved with antidepressants and ECT (6) but still manifests residual introversion, low drive and lack of motivation for further service.

During current hospitalization sailor remained abstinent, denied craving and displayed as features of alcohol withdrawal.

4. In addition to the above, it was recorded that the petitioner has 40% disability on account of "Depressive Psychosis" and 15-19% on account

of "Seizure Disorder". It was also stated that the disease of the petitioner was a "Constitutional Disorder" and not connected with the service.

5. The learned Counsel appearing for the respondents while relying upon the judgment of the Supreme Court in the case of Controller of Defence

Accounts (Pension) and Others Vs. S. Balachandran Nair, , contended that the report of the medical board proceedings has to be taken as

correct by the Courts. According to him the medical report not only indicates that the disability was not attributable to and/or aggravated by the

military service but also that the deterioration in the health of the petitioner has been caused by the petitioner by his own act.

6. Normally and in terms of Appendix to Regulation 173 of the Pension Regulations for the Army, 1969, such diseases would normally be

attributable to the military service, particularly when the person has served for more than 8-9 years in the Army. The presumptions under the

Regulations do not place burden upon the claimant to prove attribute ability or aggravation by military service. In some cases, the diseases would

be attributable to the military service if the patient got the said disease during the service and in normal course of army life. However, the

proceedings of the Medical Board in the case of the petitioner declared the petitioner to be "an old case of alcohol dependence syndrome which

aggravated by the passage of time and the petitioner failing to improve his alcoholic habits." The attribute ability to military service is a matter which

has to be examined while keeping the facts and circumstances of a case in mind. Admittedly, the petitioner was in Shape-I medical category at the

time of his induction into service but he became an alcoholic resulting in depression and finally manifestation of "Schizophrenia". How can the

authorities be blamed for this attitude and negligence on the part of the petitioner, which finally resulted in his invalidation from the service. The

opinion of the expert, patently and plausibly, and the remarks are based upon the medical history of the petitioner. There apparently is no reason

before this Court to disbelieve the proceedings of the Medical Board, their report or the contents thereof. In view of the law laid down in the case

of Controller of defense Accounts (Pension) (supra), there is no reason before the Court to hold that the action of the respondents is unjustified

and arbitrary. The petitioner was admittedly informed of rejection of his claim vide letter dated 13.8.1997. The petitioner had earlier filed a writ

petition vide which the respondents were directed to consider the case of the petitioner in terms of the judgment in the case of Ex. Const. Jasbir

Singh v. Union of India CW No. 5166/2000, decided on 6.3.2003 but again the claim was rejected. We are not able to find any error, of

jurisdiction or otherwise, in the impugned order dated 19.1.2005. We may also notice that the petitioner had rendered just four years and 56 days

of service at the time of his invalidation.

7. Accordingly, we find no merit in this petition and the same is dismissed, while leaving the parties to bear their own costs.