
(1998) 02 DEL CK 0030
In the Delhi High Court
Case No : C.W. No. 2083 of 1996

Sharita

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Citation : (1998) 4 AD 330 : (1998) 74 DLT 6

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. N.L. Bareja, for the Appellant; Ms. Alpana Poddar, for the Respondent

Judgement

K. Ramamoorthy, J.—The Petitioner's claim for grant of special family pension was rejected by the respondents on 22.02.1996.

2. The case of the petitioner tersely stated in the following terms. The husband of the petitioner was enrolled as Craftsman (Cftn MV) in the Army, Corps of EME on 19.12.1987. The husband of the petitioner was subjected to medical examination at the time of entry into service. He was declared medically fit and placed in medical category "AYE".

3. He was posted to 723 Transport Workshop Company of 32 AME Bn. C\o 99 APO located in field area in Assam, which is presumed to be prone to water borne diseases because of environmental conditions. During the course of his service in the same area he developed the disease "Non-semi nomatous Germ Cell Tumor". He also underwent operation and on 11.12.1994 he was sent to his home town on being invalided out on medical grounds with 100% disability. On 31.12.1994 he died leaving behind him, his wife and a minor son as his legal representatives. The petitioner has stated that the ailment of her husband was owing into the conditions in Assam where he was serving and Therefore, it was attributable only to military service. The fourth respondent (The Officer in charge Records EME Records Secundrabad) forwarded the relevant documents for grant

of Special Family Pension to the third Respondent (Controller of defense Accounts (Pension) Allahabad. The respondents had released Rs.82,500/- towards the payment of disability benefits. The respondents had also released payment of death benefits.

4. The respondents filed the counter affidavit contending , inter alia, that the disability from which the petitioner's husband died and on which his invalid was based was neither attributable to nor aggravated by military service and Therefore, the petitioner is not entitled to any relief in this writ petition.

5. The learned counsel for the petitioner referred to para 213 of the regulations which reads as under:

A special family pension may be granted to the family of an individual if his death was due to or hastened by -

- a) a wound, injury or disease which was attributable to military service, or
- b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

6. He also referred to para 173 of the Pension Regulations which reads as under:

Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service 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 rules in Appendix II.

The learned counsel for the petitioner also referred to Rule 7-B to Appendix II of the Regulation which reads as under:

A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

7. The learned counsel referred to Section 423 of the Regulations for the medical service of the Armed Forces on the heading Attributability to Service which reads as under:

423 - ATTRIBUTABILITY TO SERVICE

- a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service\\active service area or under normal peace conditions. It is, however, essential to

establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in field service\active service areas.

b) The cause of a disability or death resulting from a wound or injury, will be regarded as attributable to service, if the wound injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self inflicted or due to an individual's own serious negligence or misconduct, the board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board\medical officer will specify reasons for their\his opinion. the opinion of the medical board\medical officer in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. the question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O unit will furnish a report on:-

i) AFMS F-81 in all cases other than those due to injuries.

ii) IAFY-2006 in all cases of injuries other than battle injuries.

f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)\\DMS(Navy)\\DMS (Air).

8. The learned counsel for the respondents Ms. Alpana Poddar submitted that the concerned authorities considered the relevant factors passing the order on 22.02.1996. There was an appeal to the appellate authority that is the Government of India. On 17.12.1996, the appeal was rejected and the appellate authority also has considered the facts and Therefore, the petitioner has not made out any case for family pension.

9. The learned counsel for the petitioner submits that on the facts and circumstances of this case it cannot be denied by the respondents that the petitioner's husband had to suffer ailment owing into the condition in the place in which he was working in Assam and, Therefore, it is attributable to military service. On 22.02.1996 the Records Officer, Secundrabad had informed the petitioner that "CCDA (P) Allahabad has decided that your invaliding disability Non Seminomatous germ Cell Tumor is a) neither attributable to military service, b) nor aggravated by military service.

10. Learned counsel for the petitioner relied upon the judgment of this court in Smt. Reshma Devi Wd\\O Lt. Sub. Chander Bhan, Vs.Union of India and ors. CW No. 2452 of 1996 dated 21.10.1997 and the judgment of this court in Ex. Gdr. Subash Chander Vs. Union of India and ors. CW No. 2054 of 1994. It is quite unnecessary to multiply the decisions on this point. The question has to be decided on the facts established in a given case. The petitioner's husband was quite normal at the time of appointment is a matter of admission. He had developed some ailment when he was serving with the respondents. The respondents have not establishment that the ailment cannot be attributed to the military service and the burden is on the respondents. The regulations are clear on this point. The respondents should satisfy the court by producing the necessary report of the medical board and the opinion of the Doctor that the ailment was not due to the military service, which they have failed. Having come to the conclusion in para 2 of the order the appellate authority in para 3 referring to the nature of the ailment suffered by the husband had confirmed the order of the authority which order was passed on 17.12.1996. It is quite clear from the facts that the husband of the petitioner suffered from ailment while he was in

service and, Therefore the ailment is attributable to the military service and the petitioner is entitled to the special family pension.

11. Accordingly, the writ petition is allowed and the order dated 22.02.1996 and 17.12.1996 are set aside and the respondents are directed to pay special family pension to the petitioner with effect from 01.01.1995 under the rules and regulations. The respondents are also directed to pay the disability pension due to the petitioner's husband from 12.12.1994 to 31.12.1994 on or before 30.06.1998. There shall be no order as to costs.