

(1995) 07 MP CK 0054

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 956 of 1994

Shashi Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-07-1995

Acts Referred:

Army Act, 1950 — Section 192

Pension Regulations for Army, 1961 — Regulation 48, 6

Citation : (1996) 41 MPLJ 237 : (1996) MPLJ 237

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : Prabhakar Singh, for the Appellant; Indira Nair, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

By this petition under Articles 226/227 of the Constitution of India, the petitioner seeks a writ of mandamus commanding the respondents to award him disability pension.

The petitioner was in defence services as Gunner No. 14463928H. He was sent on training at Hyderabad. The petitioner while undergoing recruitment training at Artillery Centre, Hyderabad, was granted 15 days casual leave w.e.f. 31-5-1981 to 13-6-1981 to proceed to his home town at public expense. The petitioner, while, travelling from Hyderabad to Satna in Dakshin Express, sustained crush injury in little and ring fingers of right hand on 31-5-1981 at about 1700 hrs. in train accident at Itarsi. As a result of the injury, the petitioner on examination by the Medical Board was invalidated out of service in medical category (EEE) w.e.f. 4-11-1981 under Rule 13(3) item III (iii) of Army Rules, 1954, however, Medical Board recommended him fit for suitable civil employment. The case of the petitioner for grant of disability pension under Pension Regulations for the Army, 1961 (Part-I) (for short "Regulations") framed u/s 192 of the Army Act, 1950,

was considered and rejected as the injury received was not attributable to nor aggravated by the military service. The petitioner's appeal was also dismissed, by Government of India, Ministry of Defence, vide letter No. 7(854)/83 Def (Pension Appeal) dated 21-6-1986 by the Chief CDA(P) as Ministry found no reasonable grounds to alter the decision of Chief CDA (Pension) Allahabad.

Petitioner submits that under clause 6(c) of the Regulations, the petitioner is entitled to disability pension on account of disability which is attributable to military service. He placed reliance on two decisions reported in Harbans Singh Vs. Union of India, and Chatroo Ram v. Secretary, Defence and Ors. (1991) (1) S.L.R. 678.

Respondents submit that the petitioner had not suffered injury during service, which is not attributable to military service, therefore the petitioner was not entitled to disability, on the percentage of disablement at 20 percent or over was not assessed by the Competent Pension Sanctioning Authority. The disability which the petitioner had suffered was not attributable to nor aggravated by the military service, therefore, the disability pension in terms of Regulation 48 was rightly denied to him and the gratuity admissible to him of Rs. 478.85 was paid to him.

Facts in the case are not disputed, the claim of pension was denied because, in view of, the respondents, the injury was not attributable to military service. Regulation 48(a) lays down that an officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 percent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the Regulations in this section; clause (b) of Regulation 48 lays down that the question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II. Appendix II deals with Entitlement Rules, relevant for the purposes of this petition are 6(a) and (c) which reads thus :

"6. In respect of accidents the following rules will be observed -

(a) Injuries sustained when the man is on duty will be deemed to have arisen in or resulted from Army/Naval/Air Force Service unless they were self-inflicted or due to serious negligence or misconduct in which case the question of withholding the pension in full or in part will be considered.

(b) -----

(c) A person is also deemed to be "on duty" during the period of participation in recreation, organised or permitted by Service Authorities and of travelling in a body or singly under organised arrangements. A person is also considered to be "on duty" when proceeding to his leave station or returning to duty from his leave station at public expense.

(d) -----".

Admittedly, the petitioner was sent on training, where, he was sanctioned 15 days casual leave by the Competent Authority, and was permitted to leave for his home town and to travel at public expense, while the petitioner was travelling in train to reach at his leave station he sustained injuries, therefore, in view of clause (c) of Rule 6 of Entitlement Rules the petitioner shall be considered to be "on duty".

A Division Bench of Punjab and Haryana High Court in case of Chatroo Ram (supra), in a case, where the claimant was returning and undertook the journey at public expense to join duty met with accident during journey and received injuries, the Court observed that injured shall be deemed to be on duty under clause (c) of Rule 6, as the disability is to be treated as attributable to military service and therefore the petitioner would be entitled to disability pension.

A Division Bench of Delhi High Court in case of Harbans Singh (supra), while interpreting the Rule 48 has held that the person travelling even partly at public expense is a person on duty and he will be entitled for disability pension, if he is disabled in the course of such journey due to accident.

As a result of the above discussion the denial of disability pension to the petitioner on the ground that injury is not attributable to military service, while the petitioner was availing casual leave and was going to his leave station at the public expense, is not attributable to military service is illegal and is hereby quashed.

Accordingly, the petition is allowed. The respondents are directed to reconsider the claim of disability pension after examining the petitioner by presenting him before the Medical Board for his examination for determining percentage of" disability, that shall be done within a period of 3 months. No costs. ,