

(2016) 04 MAN CK 0011
In the Manipur High Court
Case No : W.P. (C) No. 58 of 2015

Shri Thokchom Mangisana Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Army Act, 1950 — Section 192
Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 653 : (2016) 4 GauLT 517 : (2016) LIC 2404 : (2016) 5 NEJ 228

Hon'ble Judges : Mr. Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : Shri Kh. Tarunkumar, Advocate, for the Appellant; Shri S. Rupachandra, ASG, for the Respondent

Final Decision : Allowed

Judgement

Mr. Kh. Nobin Singh, J.— Heard Shri Kh. Tarunkumar, learned counsel appearing for the petitioner and Shri S. Rupachandra, learned ASG appearing for the respondents.

2. The instant writ petition relates to a question as to whether the petitioner is entitled to disability pension under the provisions of Central Civil Services (Extra Ordinary Pension) Rules or not. The prayers in the writ petition are to quash and set aside the impugned order dated 13-6-2013 and to direct the respondents to grant the petitioner disability pension including a compensation of Rs. 9 lakhs.

3.1. According to the petitioner, he was recruited as General Duty in the Assam Rifles on 16-2-2004 on the recommendation of a duly constituted Selection Board. After having successfully completed the training, the petitioner was asked to perform certain demonstration along with his colleagues for their passing out parade. While he was jumping from a flying helicopter, the back of the petitioner was seriously injured and was accordingly hospitalised at the Base Hospital, Lucknow for investigation and treatment. After the petitioner having been

provided further medical treatments at Guwahati and other places, he was ultimately sent to the Command Hospital, Kolkata for specialist's treatment and opinion whereat the classified specialist (doctor), after due examination, declared that the petitioner was unfit for training due to injuries and unlikely to become a fighter soldier and was not in a physical state for continuing recruits rigorous training or carry out normal duties.

3.2. On 7-1-2006, SMO (CHS), Assam Rifles issued a brief clinical history whereby the petitioner was recommended to be invalidated out of service in medical category S1 H1 A5 P1 E1 (A5) as he would not be in a position to continue training or normal duty in view of the opinion given by Lt. Col. P.K. Lahree, SRS, Class Spl. (Surg. & Ortho.) of CH (EC), Kolkata on 17-7-2005. On the basis of the discharge certificate issued by the Medical Officer i/c of the ARTC & School Hospital, Assam Rifles, on 21-1-2006 the Deputy Commandant, ARTC & School, Dimapur, Nagaland issued a certificate by which the petitioner was discharged as trainee on medical ground. Being aggrieved by the said discharge order, the petitioner submitted a representation dated 24-2-2006 to the Director General, Assam Rifles, Shillong requesting him to quash the said discharge order and reinstate him to a suitable post according to his qualification and physical ability or to give all the financial benefits/pension entitled to by him. As the said representation was not considered by the authorities, the petitioner filed a writ petition being W.P. (C) No. 2049 of 2006 which was disposed of on 8-5-2013 by the Hon'ble Gauhati High Court, Principal Bench directing the authorities of the Assam Rifles to consider and dispose of the said representation submitted by the petitioner as expeditiously as possible.

4. In compliance of the said court's order, the representation of the petitioner was considered and on 13-6-2013, the Offg OIC Legal for the Offg Brig (Pers), Director General, Assam Rifles, Shillong issued an order to the effect that the petitioner could not be appointed to any post in Assam Rifles, as he had not completed the basic training and he was not entitled to disability pension as well on the grounds that his qualifying service was less than the mandatory 10 years to earn invalid pension and his disability was less than mandatory requirement of 60% as per Rule 9(3) of Central Civil Services (Extra Ordinary Pension) Rules. Being aggrieved by the said order dated 13-6-2013, the petitioner questioned it by way of the instant writ petition on the inter-alia grounds that the provisions of Rule 6 of the Assam Rifles Medical Examination (Categorisation and Invalidation) Rules, 1988 were not followed; that the petitioner sustained injuries while performing his duties namely the demonstration which ought to be treated as attributable to Government service; that since, admittedly, the disability was less than 60%, the petitioner ought to have been retained in service by allotting him some other work but had been discharged without granting him disability pension; that as per the handbook issued by the Director General, Assam Rifles, no service limit is prescribed for granting disability pension and that without any fault on his part, the petitioner has become a permanently disabled person without any means of leading a normal life. The instant writ petition is contested

by the respondents by filing an affidavit-in-opposition almost reiterating what has been stated in the impugned order dated 13-6-2013.

5. Facts of the case are not in dispute and the only submission made by Shri Kh. Tarunkumar, the learned counsel appearing for the petitioner is that in view of the decision rendered by the Hon''ble Supreme Court in the case of Sukhvinder Singh v. Union of India & ors., reported in (2014) 14 SCC 364, the instant writ petition is liable to be allowed and appropriate directions be issued accordingly. Shri S. Rupachandra, learned ASG has vehemently opposed to the said submission contending that the said decision of the Hon''ble Supreme Court is not applicable to the facts of the instant case. Therefore, the short question that has arisen for consideration by this court is as to whether the decision rendered by the Hon''ble Supreme Court in Sukhvinder Singh case (supra) will apply to the facts of the present case or not.

6. The facts in Sukhvinder Singh case (supra) are, in a nutshell, that the appellant was enrolled in the Indian Army as combatant soldier on 15-3-2001. On 5-8-2001, he was slapped on the ear by the Instructor in the Training Centre as a consequence of which he suffered shooting pain in that ear and was admitted to Military Hospital, Kamptee whereat the injury diagnosed was that there was "substandard hearing RT ear (old) c Tr perforation LT TM". Accordingly, on 16-2-2002, the appellant was presented before the Medical Board which recommended that he be invalidated out of service with disability of 6% to 10% on account of hearing impairment. A writ petition being W.P. (C) No. 3923 of 2005, came to be filed before the High Court of Delhi with the prayer that the respondents therein be directed to release: (a) disability pension in favour of the petitioner if disability is twenty per cent and above; (b) the service element of pension in favour of the petitioner; and (c) to re-enrol the petitioner if his disability is found less than twenty per cent. The stand of the respondents that was conveyed to the appellant, was that the disability pension is granted to an individual on his invalidment from service only when his disability is viewed as attributable or aggravated by military service and is assessed at 20% or above by the competent medical authority and since neither of these two factors was present, the appellant was not entitled to grant of disability pension in terms of the regulation. The said writ petition was dismissed by the Hon''ble High Court of Delhi vide its order dated 30-3-2006 which was assailed before the Hon''ble Supreme Court by way of a petition for special leave to appeal which was later converted into a civil appeal being CA No. 5605 of 2010. The Hon''ble Supreme Court, holding that the appellant would be entitled to the disability pension, had accepted the said appeal in the terms mentioned therein and had directed that the pension along with the arrears be disbursed to the appellant within three months from that day. The relevant paras of the said decision of the Hon''ble Supreme Court are given as under:

"3. We are not a little surprised that although the Rules or Regulations (Chapter VII of the Regulations for the Medical Services of the Armed Forces, 1983)

specifically postulate the formation of Invalidation Medical Boards, they do not set out the medical parameters justifying or requiring serviceman/officer to be removed from service. This feature renders decisions taken by such Boards pregnable to assaults on the grounds of capriciousness or arbitrariness, and this is especially so where the extent of the disability is below twenty per cent. Can the Authorities be permitted to portray that whilst a person has so minor a disability as to disentitle him for compensation, yet suffers from a disability that is major or serious enough to snatch away his employment? This is especially so since Regulation 132 ordains that the "minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years." Moreover, in the case in hand, it appears that no efforts were undertaken by the Respondents to consider whether the Appellant could continue in service in a lower medical category.

8. We think that it is beyond cavil that a combatant soldier is liable to be invalided out of service only if his disability is 20 per cent or above and there is a further finding that he cannot discharge duties even after being placed in a lower medical category. We are indeed satisfied to note that Rule 173 Appendix-II (10) postulates and permits preferment of claims even "where a disease did not actually lead to the member's discharge from service but arose within ten years thereafter." We, just as every other citizen of India, would be extremely disturbed if the Authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. Learned Counsel for the respondents has failed to disclose any provision empowering the invaliding out of service of any person whose disability is below 20 per cent. Indeed, this would tantamount to dismissal of a member of the Armed Forces without recourse to a court-martial which would automatically entitle him to reinstatement. Regulation 143 envisages the "Re-Enrolment of Ex-Servicemen Medically Boarded Out", where the disability is reassessed to be below 20 per cent. It is, therefore, self contradictory to contend that the invaliding out of service of the Appellant was justified despite his disability being of trivial proportions having been adjudged between 6 to 10 per cent only. We shall presume, albeit fortuitously for the Respondents, that re-assessment of the Appellant's disability was not required to be performed because it was found to be permanent. Otherwise, there would be a facial non-compliance with Regulation 143, which is extracted below for ease of reference:-

"143. Re-Enrolment of Ex-Servicemen Medically Boarded Out. - (a) Ex-Servicemen, who are in receipt of disability pension, will not be accepted for re-enrolment in the Army.

(b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-

enrolment, either in combatant or noncombatant (enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman applies for re-enrolment and claims that he is entirely free from the disability for which invalided, he will be medically examined by the Rtg MO and if he considers him fit, the applicant will be advised to apply to officer-in-charge, Records Office concerned, through the recruiting officer for getting himself re-medically boarded. The officer-in-charge, Records Office concerned, on receipt of the application, will arrange for his medical examination at a Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including that on accommodation and journey to and from the place of medical examination.

If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service, subject to the following conditions:-

(i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the colours and his previous colour service will count towards the minimum service required for transfer to the reserve.

(ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve.

(c) The counting of former service for pension or gratuity is governed by the provisions of Pension Regulations."

11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

7. The facts of the present case and that of the Sukhvinder Singh's case are identical in the sense that the petitioners in both the cases were recruited/enrolled in the Armed Force of the Union of India and sustained injuries, while

undergoing their respective trainings, resulting in disabilities which were less than the mandatory requirement prescribed in their respective provisions of law. Even the provisions of law applicable to both the cases can be said to be identical and in other words, they are *pari-materia* to each other except in respect of the degree of disability. As per Regulation 173 of the Pension Regulation for the Army 1961, the following conditions are required to be fulfilled for grant of disability pension:

(a) The disability is attributable to or aggravated by military service in non-battle casualty;

(b) The disability is assessed at 20% or over.

Similarly, as per Rule 9(3) of Central Civil Services (Extraordinary Pension) Rules, 1972, as contended by the learned ASG appearing for the respondents, two conditions are required to be fulfilled for grant of disability pension and they are as under:

(a) The disability is attributable or aggravated to service conditions;

(b) The disability should be greater than 60%.

8. In the present case, the petitioner sustained back injury while undergoing training which is undeniably attributable to the service for the reason that there is no material on record to show that the petitioner had this problem before being recruited to the Assam Rifles. From the medical report also, it is evident that the petitioner sustained injury while jumping from a flying helicopter and moreover, the respondents in para 13 of their affidavit-in-opposition have admitted that the disability was attributable to service. As regards the second condition, it is not in dispute that the doctor has opined that the petitioner's disability is less than 60% and therefore, the respondents have taken a firm stand that the petitioner was not eligible for disability pension. It is hard to understand that the petitioner, on the one hand, was discharged from service on medical ground that he was found unfit for continuing in service on account of his disability and on the other hand, he was denied disability pension on the ground that his disability was less than 60%. It is unfortunate that the petitioner has been penalised, for no fault of his, with his being discharged from the service and has been abandoned with no relief at all being provided by the respondents for the disability, that he suffered, which is not expected from the Union of India being an institution which ought to act fairly and reasonably. The petitioner has been left with no means to maintain his own livelihood and has to survive, throughout his life, with the help of others. There is no service limit being mandatory for grant of disability pension as is evident from the Handbook issued by the Director General, Assam Rifles and the averments made in the affidavit filed on behalf of the respondents. In this regard, the contention of the learned counsel appearing for the petitioner that the issues involved herein are covered by the decision of the Hon'ble Supreme Court, referred to above, has substance and force. Similar was the stand taken by the respondents therein in the case of

Sukhvinder Singh that his disability was less than the mandatory requirement of 20% and that he was not entitled to disability pension. But the Hon''ble Supreme Court has found the said stand of the respondents as not convincing and not being proper and reasonable and has accordingly allowed the civil appeal preferred by the appellant directing that the appellant be given disability pension. It may be noted that in para 11 of its order, the Hon''ble Supreme Court has made certain observations which are not confined to the facts of the said case only and they would be applicable to other identical cases also. In view of what has been stated herein above, this court is of the view that in terms of the principles laid down by the Hon''ble Supreme Court in Sukhvinder Singh's case, the petitioner is entitled to disability pension and accordingly, the instant writ petition can be allowed by this court.

9. For the reasons stated herein above, the instant writ petition being W.P. (C) No. 58 of 2015 is allowed with the direction that the disability pension, with arrears, shall be disbursed to the petitioner within a period of three months from the date of receipt of a copy of this judgment and order. There shall be no order as to costs.