

(1995) 03 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 2054 of 1994 and Civil Miscellaneous Appeal No. 3400 of 1994

Subash Chander

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (1995) 1 AD 1305 : (1995) 59 DLT 449 : (1995) 33 DRJ 64 : (1995) LabIC 397

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : N.L. Bareja and B.S. Saini, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) While addressing the arguments on the application Cm 3400 of 1994 the learned counsel for the parties covered the entire gamut of controversy raised in the writ petition. Learned counsel for the parties agreed that the writ petition be disposed of instead of merely disposing of the application. Accordingly I proceed to dispose of the writ petition.

(2) The petitioner was enrolled as a sepoy in the army on March 19, 1982. At the time of his entry in the army no note of any disease was made, though his medical examination was conducted. It is stated in the petition that the petitioner performed his duties as per the following details:

1) MARCH 1982 to February 1983 - He successfully completed the basic training and was posted to 10 Grenadiers. During this period he took active part in Athletics. 2) In February 1983 the petitioner joined his unit at Hyderabad and from February 1983 to May 1983 he took active part in sports. He secured first position in cross country running in a competition held at Brigade level. 3) From May 1983 to some part of the year 1986 the petitioner's unit moved to Jammu

and Kashmir and he performed his duties under difficult climatic conditions. He also took part in Athletics during this period and was found fit. 4) From remaining part of the year 1986 to March 1987 the petitioner moved to Jalandhar and then to Attari Border. At Attari Border the petitioner had to perform duties for long hours. 5) In March 1987 the unit was ordered to withdraw from the border and the petitioner was detailed to close down mine dumps and for shifting of heavy luggage. 6) On March 13, 1987 the petitioner fell ill due to fatigue and was taken to the Military hospital, Amritsar. From there he was shifted to the Military Hospital, Jalandhar and then to the Army Hospital, Delhi, where he was treated as a psychiatric patient.

(3) In December 1987 the petitioner was downgraded to medical category "Cee" for six months. In the middle of year 1988 the petitioner was examined for recategorisation but his medical category was not changed and the same was extended for another six months. Thereafter the petitioner was again examined at the Military Hospital, Jabalpur for recategorisation. By that time his condition had improved and he was upgraded to category "BEE". In January 1990 the petitioner joined his unit in Ranchi but developed symptoms of mental disorder and was admitted in the Military Hospital, Danapur. Ultimately on October 2, 1990 the petitioner was invalidated out from service in low medical category "EEE" with 40% disability for two years.

(4) The petitioner claimed disability pension from the respondents on account of having suffered disability attributable to military service. But the claim of the petitioner was rejected on October 7, 1991 by CCDA(P) Allahabad on the ground that the disability was not attributable to military service.

(5) Feeling aggrieved by the order of the CCDA(P) the petitioner filed an appeal to the Ministry of defense. On April 26, 1993 his appeal was rejected by the Government of India on the ground that the medical authorities were of the view that his disability was neither attributable to military service nor had been aggravated due to it.

(6) In these circumstances the petitioner has filed the present writ petition challenging the order of the Government of India dated April 26, 1993 with the prayer, inter alia, that the respondents be directed to pay disability pension to the petitioner with effect from the date of his discharge from service along with interest @ 18% per annum. Besides the petitioner is claiming compensation for suffering mental agony due to denial of disability pension and other benefits.

(7) I have heard learned counsel for the parties on both sides. The short question involved in this writ petition is whether the petitioner who was discharged from service on the ground of mental disorder is entitled to disability pension. In this regard my attention was drawn to the opinion of the medical board dated December 2, 1987 (Annexure R-1 to the counter affidavit). According to the medical opinion the petitioner contracted the disability during his service in the Army but the same was not held attributable to it.

(8) It is on the basis of this opinion that the petitioner has been denied the disability pension. In order to appreciate the question involved in the case, Regulation 173 of the Pension Regulations of the Army and Rule 7(b)t of Appendix Ii to Pension Regulations require to be noticed. These provision read as under:

"REGULATION173. 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 to 20 per cent or over". Rule 7(b) A disease which has led to an indivudal"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 indivudal"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".

(9) According to these provisions the cause of disability which leads to discharge of an individual from service ordinarily will be deemed to have arisen in service if no note of the disability was made at the time of his entry in the military service or unless medical opinion holds that the disease which led to his discharge was such as could not have been detected by medical examination prior to his acceptance for service. Admittedly no note of any disease was made at the time of petitioner"s acceptance for military service nor the medical opinion holds that the mental disorder from which the petitioner was suffering could not have been detected on the medical examination prior to his acceptance for military service. In the counter affidavit no reference has been made to the existence of any such note or opinion. It is also not claimed by the respondents that there is such a record. Minutes of the Medical Board dated December 2, 1987 (Annexure R-1) on which reliance was placed by the respondents does not state that the ailment of the petitioner could not have been detected at the time of his entry into service. In fact from page 2 of the Minutes of the Medical Board (Annexure R-1) it clearly emerges that his illness started while he was employed in the forward area. The respondents also relied upon " Invaliding Medical Board" proceedings dated August 20,1990 (Annexure R-2). But this document also does not show that it was not possible to detect the disability of the petitioner at the time of his entry into service.

(10) In Union of India and others Vs. Bodan Lal Yadav 1994(1) S.L.R. 390 it was held by the Punjab and Haryana High Court that Regulation 173 of the Pension Regulations read with paragraph 423(c) of Regulations for the Medical Services of the Armed Forces , show that the cause of disability which leads to the person concerned being discharged from service will be deemed to have arisen in service, if, no note of it was made at the time of his entry in the armed forces or unless a note was recorded at a subsequent date that the disease in question was such as could not have been detected by medical examination before he had

joined service. Allowing the writ petition the Division Bench of the Punjab and Haryana High Court observed that there was no material on record to show that the writ petitioner was found to have been suffering from the disease at the time of his entry into service nor was there any note in his medical examination at the time of discharge to the effect that he was suffering from this ailment at the time of his entry into service or that it could not be detected at that time.

(11) To the similar effect are the following judgments of the Punjab and Haryana High Court:

1.EX.HAV.SINDERPal Singh Vs. Union of India and another 1991(5) Slr 459. 2.Bodan Lal Yadav, Ex. Signalman No.6279466 Vs Union of India through Secretary, Ministry of defense, New Delhi and others 1992 (3) Slr 758 3.Ex.Hav/ Clk Wishwa Nath Vs. Union of India and others 1991(5) Slr 476. 4.Roshan Lal Vs. Union of India and others 1992 (3) Slr 662. 12.Reverting to the present writ petition the respondent has not placed any material on record to show that the petitioner was suffering from mental disorder at the time of his acceptance into service and the said disease could not be detected at that point of time. Rather the opinions of the medical boards (Annexures R-1 and R-2) clearly show that the petitioner was not suffering from the said disability when he entered service as the same started while he was employed in a forward area. The petitioner did not have any family history of mental illness. In this regard it will be advantageous to extract the said opinions in so far as they are relevant. Annexure I dated Dec.2, 1987 - Medical Board proceedings".

"THE above features are diagnostic of schizophrenia (ICD 295) he has been treated with neuroleptics, convulsive therapy, psychotherapy and a period of sick leave to which he has shown good response. No active psychotic features in him now. His illness started while he was employed in forward area. No part or family history of mental illness. Premorbid work record is good. Motivation towards service is strong."

Annexure R-2 dated 20.8.1990 Opinion of the Medical Board

(12) Did the disability/ies exist before entering service ?No.

(13) Learned counsel for the respondents invited my attention to the opinion of the medical board recorded on September 3, 1990 wherein the cause of disability was given as constitutional in nature. He submitted that this was enough to disallow disability pension to the petitioner as disability was not attributable to the military service. He also relied upon two decision of this court in Ex. Hav. Inder Singh Vs. Union of India and others (Cwp No.4213 of 1993) decided on October 4, 1993 and Shri Pardeep Kumar Singh Vs. Union of India (CWP 3566 of 1993) decided on February 20,1995. These cases do not help the respondents as they are distinguishable in view of the peculiar facts of the present case, namely, that the disease of the petitioner started while he was employed in a forward area and there was no family history of mental illness in his case. Besides the disability did not exist before the petitioner entered service. A conjoint reading of

the aforesaid Regulation 173 and Rule 7(b) leave no manner of doubt that if no note of the disease was made at the time of individual's acceptance for military service or no note of it was made at the time of his discharge that the disease was such as could not have detected on medical examination prior to his acceptance for service, the disease will be deemed to have arisen during service.

(14) Since the positive opinion of the medical board was that the petitioner did not suffer from disability before his entry into service, he could not be denied the disability pension in terms of Regulation 173(c) of the Pension Regulations read with Rule 7(b) to Appendix II of Pension Regulation.

(15) In view of the above discussion the writ petition succeeds and the order of the respondents dated April 26, 1993 is quashed. The rule is made absolute. The respondents are directed to give disability pension to the petitioner having regard to the extent of disability with effect from the date of his discharge. The amount of disability pension admissible to the petitioner will be worked out by the respondents on the basis of the extent of his disability within one month and the payment will be made in accordance with the aforesaid decision. The petitioner will be paid a sum of Rs.2000.00 as costs by the respondents.

(16) The writ petition and the application are disposed of accordingly.