

(2000) 05 P&H CK 0168
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15315 of 1997

Sukhdev Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2000) 05 P&H CK 0168

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Judgement

Swatanter Kumar, J.—Ex-Gunner Sukhdev Singh has challenged the validity of the order dated 1.3.1993 passed by CCDA (Pensions). Allahabad and dated 8.1.1996 passed by the Central Government An-nexures P.2 and P.4 respectively to the writ petition rejecting his claim for grant of disability pension with a further prayer that respondents be directed to grant him the disability pension in terms of Army Pension Regulation 173 and all consequential benefits arising therefrom w.e.f. 1.8.1992, in this writ petition under Articles 226/227 of the Constitution of India.

2. The necessary facts are that the petitioner was enrolled in the Indian Army on 15.11.1983 and allocated regiment of Artillery. While returning from leave from his home to his unit he met with an accident while travelling by an auto-rickshaw at Delhi in the year 1989. His left leg was fractured. He was downgraded to medical category CEE for six months. In 1990 his unit moved to Chandi Mandir whereafter he started getting head-ache and in the year 1992 was admitted to Psychiatric Ward of the Western Command Military Hospital. On 17.7.1992 he was downgraded to medical category EEE, and thereafter he was declared unfit by a medical board for continuing in army service. He was invalided from army with 60% disability on the same date. His claim for disability pension was declined on 1.3.1993 by CCDA (Pensions), Allahabad vide a cryptic order. He preferred an appeal against that on 21.4.1993 which was also rejected by the

Central Government without assigning any reasonable cause vide order dated 8.1.1996. Thereafter he served a notice upon the respondents and filed the present writ petition. On the above facts the petitioner submits that his claim for disability pension has been arbitrarily rejected by the respondents and as such prays that orders Annexures P.2 and P.4 be quashed.

3. This claim of the petitioner was contested by the respondents who filed a detailed reply. It is not disputed that the petitioner had met with an accident and suffered fracture while coming from leave. It is also not disputed that he suffered disability to the extent of 60%. The relevant paragraphs of the reply read as under :-

"While serving with 46-A Defence Regiment (ADR), he was admitted to Command Hospital, Western Command, Chandimandir on 14.2.1992 and was discharged on 3.7.1992. His disease was diagnosed Affective Psychosis (MDP) 296. As per the opinion of the duly constituted Invaliding Medical Board (IMB) held at Chandimandir on 10.6.1992, which examined the petitioner, the disease from which he was suffering, was held to be functional disorder not connected with service. It was found to be neither attributable to nor aggravated by military service. His disability was assessed at 60% for 2 years only. The relevant extract of the Medical Board proceedings of Invaliding Medical Board proceedings is reproduced hereunder for ready reference :-

"2(a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether :-

- (i) It is attributable to service during peace or under field service conditions; or
- (ii) It has been aggravated thereby and remains so; or
- (iii) It is not connected with service.

The Board should state fully the reasons in regard to each disability on which its opinion is based.

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Disability

A

B

C

AFFECTIVE (MDP) 296

PSYCHOSIS

NO

NO

YES

(d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.

BEING A FUNCTIONAL DISORDER NOT RELATED TO SERVICE.

Therefore, the petitioner's Invaliding Disease has no connection with military service.

It is, therefore, apparent that the petitioner was invalided put of service for the disease Affective Psychosis (MDP) 296 and not on account of injury sustained in the accident, for which he had already been upgraded to Medical Category-AYE during the year 1990. There exists no connection between the two."

4. During the course of hearing the respondents were also called upon to produce the relevant record. The proceedings of the Medical Board invaliding the petitioner from service were produced before the Court. In fact the above paragraphs are reproduction from the said records. It cannot be disputed that the petitioner was discharged from any service with 60% disability and as such the petitioner fully specifies the ingredients of Army Regulation 173 except whether such disability/injury was attributable or aggravated by military service. It is not disputed that the petitioner had met with an accident while on duty i.e. when he was returning from his leave and was going to join his duty. Return from annual leave from home to station of posting has been held to be a period on duty. As such the injury/fracture suffered by him in the year 1989 was certainly attributable and was a direct result of army service. It was so held by the Hon'ble Apex Court in the case of Joginder Singh v. Union of India and others 1996(2) S.L.R. 149 : 1994(4) SCT 345 (P&H).

5. Thereafter according to the petitioner he was subjected to different postings and his unit had been shifted from one place to another. The stress and strain of army service further caused problems to him. He started getting severe head-ache and thereafter on 31.7.1992 he was discharged from army service being unfit for military service on account of "Affective Psychosis (MDP)". It is the conceded case that the petitioner had been recruited to army service after satisfying the stringent standards prescribed for the purpose. He had served the army perfectly without any complaint or adverse remarks about his service till 1989 when he met with an accident and thereafter in 1992 when he developed severe head-ache.

6. The expert body like the Medical Board constituted for invaliding has to make definite conclusions and cannot afford to write ambiguous remarks as it is bound to affect the entire service career or the benefits accruing therefrom even in the event of his discharge or retirement from army. The Medical Board had observed that it was a functional disorder not related to service. In the entire medical report it was nowhere stated by the medical board that it was a constitutional disease or a disease which could not have been detected on the previous

occasions. If after the unblemished service of more than six years a person suffers such injury and is exposed to strain and stress of army service, it cannot be said that such injury or disability is neither attributable nor aggravated by military service.

7. Learned counsel for the petitioner has relied upon a judgment of Division Bench of this Court in the case of Union of India and others v. Ex-Sepoy Satwinder Singh through Ms wife Smt. Kulwant Kaur and another 1998(4) R.S.J. 467, where the Court held that discharge of a member of the army after putting in considerable service with 70% disability could be entitled to grant of disability pension. Still in another case titled as Prem Siiigli v. Union of India and others 1996(4) S.L.K 97: 1996(3) SCT 250 (P&H) it was stated that if a person was invalided out of army service as suffering from Myotonia Dystrophica, he would be entitled to disability pension. Reliance was placed upon another judgment of a Division Bench of this Court in the case of A.J.S. Chaudhary v. Union of India and others 1999(1) RSJ 778 to contend that schizophrenia is a disease attributable or aggravated by army service, thus, entitling the discharge subject to grant of disability pension.

8. In view of the above settled proposition of law and keeping in view the peculiar facts and circumstances of this case, the impugned orders Annexures P.2 and P.4 are hereby set aside and the respondents are directed to consider the case of the petitioner for grant of disability pension, disability being 60% as on the date of discharge. The petitioner was discharged from Army in the year 1992, but he filed the present writ petition only in October, 1997 as such he would be entitled only to the arrears of three years from the date of filing of the petition. Further, the respondents would be at liberty to subject the petitioner to a re-survey medical board as the initial disability granted was only for two years, for continuation of the said benefit. In the event of respondents not calling upon the petitioner to appear before the re- survey board, the benefits would continue in terms of the findings recorded by the earlier medical board.

9. Petition allowed