

(2004) 05 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 526 of 1999

Suresh Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2004

Acts Referred:

Citation : (2004) 2 ShimLC 144

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : Sandeep Vashishtha, for the Appellant; Baldev Singh, Additional Central Government SC, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Chand Sood, J.—Suresh Chand, Petitioner herein, was enrolled in the Indian Army on 16th November, 1977 and discharged on 30th November, 1997 after completion of 20 years and 14 days of service. He was boarded out for having been placed in low medical category, under Rule 13(3) Item-III (i) of the Army Rules.

2. The Petitioner, it appears, applied for disability pension as he was discharged on medical ground having suffered "deafness bilateral". His disability was assessed at 20% permanent by the Medical Board (Annexure P-1). This application of the Petitioner for the grant of disability pension was rejected on 28th March, 1998 (Annexure P-2) on the ground that disability suffered by the Petitioner was constitutional in nature and not related to his service. Petitioner filed an appeal which was rejected by a communication dated 22nd July, 1999 (Annexure P-3) informing the Petitioner that the disability on account of which he was discharged from service was constitutional and the Appellate Medical Authority was of the view that there was no history of any trauma prior to the diagnosis of the disability. He was also informed that according to the opinion of the Specialist concerned his disability was neither attributable to nor aggravated by the performance of his duties in the military service.

3. Aggrieved, Petitioner has filed the present petition for the following reliefs:

(a) impugned orders dated 28th March, 1999 (Annexure P-3) be quashed and set aside.

(b) the Respondents be directed to allow disability pension to the Petitioner from the date of discharge alongwith arrears and interest".

4. The case of the Petitioner is that he admittedly was not suffering from this disease when enrolled in the Army. He developed the symptoms of deafness in March, 1993 when his Unit was on field firing exercise at "Mahajan Range" Rajasthan and at Suratgarh because of heavy sounds of tank firing and other arms due to which the Petitioner lost his hearing of both the ears. Drums of both the ears were damaged due to the field firing. The Petitioner was under treatment of the Army Hospital(s) and was discharged on medical grounds having permanent disability of 20% as assessed by the Medical Board. It is the case of the Petitioner that he suffered this disability when he was in active service of the Army during field firing at Suratgarh and Rajasthan. He did not have such problem prior to the said exercise and therefore, disability suffered by the Petitioner is not only attributable to his Army service but was aggravated during this period.

5. The Respondents in their return have taken a stand that even though the Petitioner was placed on low medical category in December, 1994 by the Screening Board, but he was retained in service subject to up-gradation of his medical category up to acceptable level. But, as the Petitioner again, on Review Board, was placed on low medical category (permanently). Therefore, he was discharged from service on 30th November, 1997. The claim of the Petitioner for disability pension is disputed on the grounds that the disability is not attributable to his military service.

6. I have heard Mr. Sandeep Vashishta, learned Counsel for the Petitioner and Mr. Baldev Singh, learned Additional Central Government Standing Counsel.

7. It appears, the Board which invalidated the Petitioner recommended disability pension as is apparent from the proceedings of the Medical Board (R-1). The findings of the Medical Board reads:

1. The board is agree with the opinion of the Specialist and indl. is FIT to be released from service in Cat CEE (P).

2. The findings of the medical board about the entitlement and assessment of disability are only recommendatory in nature and subject to review/revision by the competent medical authorities i.e. Medical Advisor (Pension)/JD FMS (Pension)/Dy. DGAFMS (Pension/ DGAFMS) as defined in the amended Rule 17A of the entitlement at Rules to casualty pensionary awards 1982.

8. The recommendation for the disability pension was, however, made subject to review/revision which may be made by the Medical Advisor (Pension)/JD FMS

(Pension) Dy. DGAFMS (Pension/DGAFMS) as per amended Rule 17- (a) of the entitlement Rules to casualty pensionary awards, 1982.

9. Reading of Annexure R-2 shows that the claim of the Petitioner for disability pension was rejected on the advice of the Medical Advisor (Pension) attached with office of the Chief CDA(P), Allahabad on the ground that the disability was neither attributable to nor aggravated by the military service.

10. Regulation 173 of the Pension Regulation of Army, 1961 provides the conditions for the grant of disability pension. It reads:

173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated 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".

11. Thus, reading of Regulation 173 makes it clear that an individual who is invalidated from the service for the reason of disability is entitled to disability pension, if such disability is attributable to or aggravated by military service and such disability is 20 per cent or more. It further provides that the question whether a disability is attributable to or aggravated to military service has to be determined under the Rules in Appendix-II.

12. A combined reading of Rules 2, 3 and 4 of Appendix-II make it clear that if there is a casual connection between disabled man and military service and for this purpose, all material, direct or circumstantial has to be taken into consideration and if such casual connection is made out, then disablement would be attributable to military service. Paramount object of the rules is to give liberal benefit to the claimant for disability pension.

13. It is un rebutted case of the Petitioner that he suffered the disability when he was on active duty at Mahajan Range, Rajasthan Suratgarh in the year 1993. It is so certified even in the disability claim by the concerned Director, Armed Forces Medical Services (Annexure R-2). It reads:

(ii) S.N. Deafness (Bil) Mar 93 Suratgarh I.D. is on deopathic disorder as opined by RMR".

14. There is no manner of doubt more so on account of the own admission of the Respondent, as noticed earlier, that the Petitioner suffered disability in the year 1993 during field firing exercise in Rajasthan and Suratgarh and was aggravated due to the continued field firing exercise in which the Petitioner participated. Disability suffered by the Petitioner has more than a casual connection which is military service and would be deemed to be due to military service in terms of Rule 2 of Appendix-II. At the cost of repetition, it may be noticed again that the allegation of the Petitioner on this aspect is not rebutted by the Respondent in

their return.

15. It may be noticed that Rules 17 and 27 of the Entitlement Rules, 1982 issued vide Appendix (IX) to the Ministry's Letter No. I(I)/81/D(Pen-C) dated 22.11.1983, were amended in June, 1996. Rule 17 after its amendment reads:

17(a). For the purpose of these rules, the following authorities shall be the Appropriate/Competent Medical Authorities for giving medical opinion on the aspects of assessment of disability and acceptance of death/disablement due to causes attributable to/aggravated by military service:

(i) In respect of initial claims of Commissioned Officers. Medical Advisor (Pension)/Jt. Dir. AFMS (Pension) in the Office of the Dir. General, Armed Forces Medical Services (DGA, FMS).

(ii) In respect of initial claims of personnel below Officer rank. Medical Advisor (Pension)/Jt. Dir. AFMS (Pension) attached to the Office of Chief CDA (Pensions).

(iii) At the First Appeal stage. Dy. DGAFMS (Pension) in the Office of DGAFMS.

(iv) At the Second Appeal stage. Dir. General Armed Forces Medical Services (DGAFMS).

(b) At the time of invalidment/release of a service personnel medical views on attributability/aggravation and degree of disability shall be given by the Invaliding Medical Board (IMB)/Release Medical Board (RMB). The findings of the IMB/RMB/RSMB which are recommendatory in nature, shall be reviewed by the Competent Medical Authority at the time of consideration of Initial claim/ Appeal for grant of disability pension. The Competent Medical Authority may for reasons to be recorded in writing, alter or modify the recommendations of IMB/RMB/RSMB/Lower Medical Authorities.

(c) The Competent Medical Authorities after review of the IMB/RMB/RSMB proceedings/findings of the lower Medical Authorities, study of related medical/ service documents, the clinical profile recorded and keeping in mind the aetiology and nature of disease, shall evaluate the role played by service factors in the onset/ progress of the disability. The recommendations of the Competent Medical Authority as accepted by the Pension Sanctioning Authorities i.e., Chief CDA (Pension)/Ministry of Defence shall be final with regard to the entitlement and assessment of disability for the purpose of grant of disability pension".

16. A bare reading of Rule 17(b) clearly shows that at the time of invalidment/ release of a service personnel medical views on attributability/ aggravation and degree of disability has to be given by the Invaliding Medical Board (IMB)/ Release Medical Board (RMB) and these findings which are recommendatory in nature are subject to review by the Competent Medical Authority at the time of consideration of Initial claim/ Appeal for the grant of disability pension. The Competent Medical Authority can alter or modify the recommendations of IMB/ RMB/RSMB/Lower Medical Authorities only for the reasons which must be

recorded in writing.

17. In the present case, the Competent Medical Authority i.e. Medical Advisor (Pension) attached to the Office of Chief CDA (P), Allahabad has not given any reason for dis-agreeing with the recommendations of the Invaliding Medical Board (IMB) and Release Medical Board (RMB). As is apparent from the proceedings of the Medical Advisor (Pension) (Annexure R-2) the Advisor has not given any reasons for his disagreement.

18. In the present case as already noticed that the Petitioner suffered the disability during field firing exercise and because of heavy sounds of tank firing and other arms the disease was aggravated and thus is clearly attributable to military service. The assertion of the Petitioner it may be noticed at the cost of repetition, that he suffered the disability because of heavy and high pitch sounds during firing exercise in fields are not rebutted in the return filed by the Respondents.

19. To conclude it is held that the disability suffered by the Petitioner is attributable to his military service having arisen during military service and remain aggravated due to such service.

20. No other point was urged.

21. In result, the petition is allowed. Annexure P-2, letter from the Record Officer for OIC Records, dated 28th May, 1998 informing the Petitioner that his application for the disability pension has been rejected and Annexure P-3, letter from the Government of India (Ministry of Defence), New Delhi, dated 22nd July, 1999, informing the Petitioner that his appeal against the rejection of disability pension has been rejected, are quashed. The respondents are directed to grant the disability pension to the Petitioner in accordance with the Rules and Regulations. Such pension shall be calculated and paid to the Petitioner from the date of discharge within three months from today. Failing which the Petitioner shall be entitled to interest at the rate of 9% per annum on the arrears from the date of discharge.

22. No costs.