
(2010) 07 PAT CK 0015
In the Patna High Court
Case No : L.P.A. No. 1041 of 2003

Union of India and others

APPELLANT

Vs

Anju Devi

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2010) 127 FLR 1028

Hon'ble Judges : Navin Sinha, J; Jyoti Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Navin Sinha and Jyoti Saran, JJ.—The petitioner is the widow of late Mohan Kumar Thakur, Ex-Sepox, Cook No. 6472757 in the Indian Army. He served at several places including high altitudes when he suffered brain related problems during posting at Bagdogra. He was treated in the Military Hospital and was diagnosed suffering from "unspecified psychosis". The husband of the petitioner was then invalided out of service due to medical cat (EEE) and discharged from service on 25.5.1991. He was paid his dues for Army Group Insurance and also disability benefits covered under the Army Group Insurance Scheme.

2. The Army Pension Regulations, 1961 (Part-I) (hereinafter called "the pension Regulations") provide for disability pension to those who suffered from more than 20% disability. Unfortunately, the Sepoy was deceased on 25.7.1997. In his lifetime, the petitioner had raised a claim for disability pension which was denied, affirmed in appeal. She approached this Court in C.W.J.C. No. 6262 of 1997 for relief. The respondents in the counter affidavit stated that the matter was under reconsideration. The writ petition was disposed off. It has again been rejected after reconsideration as communicated to the petitioner by letter dated 29.4.1999.

3. Being constrained with resources, in her quest for justice she approached the Legal Services Committee of the High Court which then assigned the writ petition

to a Counsel from its panel. In the writ petition the Appellant Sever never filed a counter affidavit. The impugned order was supported only from the recitals contained therein. The Writ Court concluded upon discussion that "unspecified psychosis had causal connection with the service conditions". It observed that it was unfortunate that the widow of the Army Personnel was being denied disability pension which otherwise was required to be liberally construed keeping in view the arduous nature of work and sacrifice made by Army Personnel to save and protect the nation and its people. The writ petition came to be allowed, consequently the appeal.

4. Learned Counsel for the Union of India submitted that the impugned order dated 29.4.1999 was based on a medical report that the disease of the respondent's husband was constitutional disorder as the onset was in a peace area with no past history of head injury and CNS infection. There was no delay in diagnosis. In view of the analysis of the medical analysis that the disease had nothing to do with army service or being aggravated due to army service, the order of the Writ Court contrary to the expert report was not sustainable. The Writ Court should have been loath to interfere with the report of the Medical Board to arrive at a contrary conclusion. Reliance was placed on Union of India and others v. Surinder Singh Rathore (2008), and Union of India and others v. Keshar Singh 2007 (113) FLR 1008 (SC).

5. Learned Counsel for the Appellant also placed before us another judgment of the Supreme Court in Civil Appeal No. 5678 of 2009, Secretary, Ministry of Defence and others v. Damodaran A.V. through LRs and others disposed of on.20.8.2009, in support of his submissions.

6. Countering the submissions, learned Counsel for the respondent sought to distinguish the judgments relied upon on the reasoning that there shall have to be a distinction between those diseases acknowledged in the Pension Regulations as attributable to or aggravated by the working conditions in the Army and such diseases not covered under the Regulations but which are contended to have been caused or aggravated by Army working conditions. Reliance was placed on a hard-copy of a CD. printout from the AIR software of a Division Bench judgment of the Punjab and Haryana High Court in Ex. Sepoy, Bholu Ram v. Union of India and others 2008 Lab.I.C. 841 (P&H), and Union of India and another. v. Sepoy Suram Singh 2009 Lab.I.C. 188 (J & k.) (D.B).

7. Regulation 173 of the Pension Regulations reads as follows:--

"173. Primary conditions for the grant of disability pension.--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 at 20 percent or above."

The question whether a disability is attributable to or aggravated by military service shall be determined under rule in Appendix-II.

Relevant portion in Appexdix-II reads as follows:--

"2. Disablement or death shall be accepted as due to military service provided it is certified that--

(a) The disablement is due to wound, injury or disease which--

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby:

(b) the death was due to or hastened by--

(i) A wound, injury or disease which was attributable to military service, or

(ii) The aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note.--The Rule also covers cases of death after discharge/invaliding from service.

3. There must be a casual connection between disablement or death and military service for Attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case."

(Emphasis ours)

Annexure-III to Appendix-II is relevant for the present controversy classifies psychosis and neurosis at item 1 as follows:--

"1. Psychosis and Psychoneurosis."

8. Regulation 423 of the Pension Regulations reads as follows:--

"423. Attributability to Service.--(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least

probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty", in armed forces. In case of injuries which were self-inflicted or duty to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted, from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual'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 individual's acceptance for service in the armed forces. 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.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board/medical officer will specify reasons for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the Company unit will furnish a report on:--

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer, will not be accepted except in case of stations where it is not possible or feasible to assemble a regular medical board for such purposes. The

certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS(Navy)/DMS(Air)".

(Emphasis ours)

9. While considering whether a particular disease was a constitutional disorder or originated in service and whether it was aggravated due to the work conditions, there shall lie a distinction between such diseases which are classified by the Army itself as acceptable for the likelihood of having a causal connection with the service conditions under the Pension Regulations. Such diseases not classified by the Army under the Pension Regulations to be having a causal connection with service would be an entirely different issue when the opinion of the Medical Board has necessarily to be given primacy, and the Court should not interfere with it lightly. The matter shall however be fundamentally different where the Pension Regulations itself recognize a disease as susceptible to originate or aggravate due to the work conditions. The significance of the words "cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service", obviously will take into ambit such diseases which could not be noticed or detected at the time of induction into Army service when the presumption ordinarily shall be of its having originated or aggravated during the military service. While in the former case the onus may lie on the person claiming the benefit, in the latter the onus shall shift on to the Army authorities to deny the benefit of the disability pension under the Regulations. In the case of Sepoy, Bhola Ram (*supra*) relied upon by the respondent, it has been held at paragraph 8 that Psychosis means mental illness and neurosis means a mental state resulting in high level of anxiety, unreasonable fears and behaviour. Once annexure to the appendix acknowledges it to be a disease affected by stress and strain, it was for the Medical Board of the Army to state of the circumstances under which it was specified that it was a pure constitutional disorder unrelated to the stress and strain of the military service. Had the Sepoy been to diagnosed, at the time of entry into service, he would have been denied appointment. Even if he had any strains of the disease which the authorities did not detect the surfacing of the same in service is obviously a suggestive case of aggravation due to service conditions.

10. Merely because it could not have been detected earlier, does not satisfy the requirement of the Regulations to hold in a casual manner that it was a constitutional disorder without furthermore. Regulation 423 itself provides that in the event of any doubt the provisions had to be construed liberally in favour of the person in service and that whether it was in field service or in active service area was not relevant.

11. The judgment relied upon by the Appellants pertain to diseases of schizophrenia and eye disease not coming within Annexure-III to Appendix-II or to such diseases which are classified thereunder as not normally affected by

service. To us, that primarily distinguishes the judgments relied upon by the Appellant with those relied upon by the respondents.

In view of the aforesaid discussion, we find it difficult to interfere with the judgment under appeal.

12. Before we part with case, we are constrained to observe the manner in which the Army resorts to technicalities despite judgments on the issue against it, when it comes to grant of disability pension. The Writ Court having expressed its anguish in the matter, we would have expected the Army to have a more liberal approach towards those who risk their lives to give a better tomorrow to the nation. The young age of the Sepoy when he suffered the disability certainly calls for more compassion to him and his family.

13. We have already noticed the difficulties of the respondent who had to seek the service of the Legal Services Committee of the High Court. We expect the Army, as distinct from civilian service to be more responsive and examine the records of the husband of the petitioner. If any other dues are found, we expect with all fairness it shall also be considered and paid.

14. For the same reason of the disabilities of the respondent in pursuing matters before this Court, in the event of non-compliance by the Appellants, perhaps letter of the respondent addressed to Hon''ble the Chief Justice annexir copy of the present order may be sufficient, if the Court is otherwise satisfied initiate suo motu contempt

The appeal is dismissed.