

(2014) 07 KL CK 0005
In the High Court Of Kerala
Case No : Writ Appeal No. 375 of 2010

Union of India

APPELLANT

Vs

Madhusoodhanan P.O.

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 4 ILR 525 : (2014) 3 KHC 518 : (2014) 3 KLT 800 : (2014) LabIC 3858

Hon'ble Judges : Ashok Bhushan, J;A.M. Shaffique, J

Bench : Division Bench

Advocate : T.P.M. Ibrahim Khan and P. Parameswaran Nair, (Assistant Solicitor Generals of India), Advocate for the Appellant; B. Harish Kumar, Advocate for the Respondent

Judgement

Ashok Bhushan, J.—Heard learned counsel for the appellants as well as the learned counsel for the respondent. This writ appeal has been filed by the respondents in WP (C) No. 15049/2007 against the judgment dated 01/06/2009 of the learned Single Judge of this Court by which the writ petition filed by the petitioner Sri. Madhusoodhanan. P was allowed holding that the petitioner is entitled to disability pension as recommended in Ext. P3 proceedings of the Medical Board. Respondents in the writ petition, Union of India is before us in appeal against the said judgment.

2. The facts in this case would disclose that the writ petitioner entered in service on 02/09/1983. He made an application for discharge on compassionate grounds in July 1998. But the application was not considered, instead he was transferred to field area in Jammu and Kashmir on 31/03/2000. While he was working, he contracted a disease in his right eye. He was admitted in an Army hospital but the ailment could not be cured. He was again admitted in another hospital on 15/05/2000 from where he was discharged on 24/06/2000. The petitioner was examined by the Medical Board on 25/06/2000. The Medical Board, after examining the petitioner, made the following recommendations:

To be discharged from service in medical category CEE(P).

3. The petitioner, however, was not discharged in low medical category, rather relying on his earlier application praying for discharge on compassionate grounds, he was discharged on compassionate grounds by order dated 15/04/2000. The petitioner, after prematurely discharged on compassionate grounds, submitted an application for grant of disability pension, which was denied on the ground that the petitioner was discharged from service on 01/08/2001, at his own request and not on medical grounds. The said decision was challenged by the petitioner by filing WP (C) No. 15049/2007, which has now been allowed.

4. The learned counsel for the appellants challenged the judgment of the learned Single Judge contending that the writ petitioner, having been discharged on account of his own request, is not entitled for disability pension. He submitted that disability pension could have been granted only when he was discharged on medical grounds in low medical category. He further submitted that under Rule 178 of the Pension Regulations for the Army, 1961 (hereinafter referred to as "the Regulations"), he is not entitled for the benefit when he was discharged on his own request. He further submitted that in any view of the matter, the disease cannot be held to be attributable to military service.

5. Learned counsel for the respondent/writ petitioner submitted that at the time when the petitioner submitted the request for discharge on compassionate grounds, he was not suffering from the disease and that he was not discharged on low medical category. He contends that the request made by him in July 1998 was not accepted, rather he was transferred to field area where he contracted the disease. It is also contended that though the Medical Board recommended the petitioner to be discharged as low medical category in medical category CEE(P), the recommendations were not accepted and relying on his earlier request for discharge on compassionate grounds, the order of discharge was issued. He further submits that the petitioner was admitted in hospital in May, 2000 and June, 2000 on account of the aforesaid ailment, but it could not be cured. It is submitted that the disease was attributable to military service and there was clear entitlement for grant of disability pension as per the Regulations.

6. The learned counsel for the parties also placed reliance on various judgments of this Court as well as the Apex Court which shall be referred while considering the submissions made.

7. The main thrust of submission of the learned counsel for the appellants is that since the petitioner was discharged from service not on account of he being in low medical category rather than on account of his request for premature retirement, he is not entitled for disability pension. It is relevant to note that the request made by the petitioner in July, 1998 for premature retirement was not acceded to and he was transferred to field area where he got the disease. The petitioner was admitted in two hospitals and the Medical Board examined him

and recommended for discharge in low medical category. There being recommendation of medical board, which has been brought on record as Ext. P3, there was no reason not to discharge the petitioner in low medical category. At that stage, discharging the appellant on his own request was inappropriate and cannot be said to be just exercise of power of discharge at the will of the respondent. When recommendation of the Medical Board clearly entitle him for the benefit of the Regulations, the act of the respondents in discharging the petitioner on compassionate grounds relying upon the request made by him in July, 1998 was uncalled for. There cannot be any doubt that had there been no recommendation of the Medical Board and on the request of the appellant for premature retirement alone he would have been retired, he could not have claimed for disability pension. But the claim of disability pension had arisen on account of subsequent event of the disease contracted. He was treated in the Army Hospital, which resulted ultimately in recommendation of the Medical Board for discharge as low medical category. The benefit to which he was entitled in normal course of business cannot be denied only on the ground that the order was issued for discharge on his own request. As observed, reliance on the request of the petitioner for premature retirement at this stage is wholly uncalled for and does not commend us. The learned Single Judge has rightly appreciated the facts and circumstances of this case and directed the respondents to extend the benefit of disability pension to the petitioner.

8. Learned counsel for the respondent/writ petitioner has also placed reliance on the judgment of the Delhi High Court reported in Mahavir Singh Narwal Vs. Union of India (UOI) and Another, . In the said case also, the petitioner had made request for being discharged on compassionate grounds. After examining the petitioner, the Medical Board made recommendations treating him as CEE(P) category. But, disability pension was denied to him on the ground that he is not entitled for the same as he was discharged on his own request. The Division Bench, considering the similar arguments as has been placed by the learned counsel for the appellants in this case, repelled the arguments of the learned counsel for the appellants in the following words:

The arguments advanced by the learned counsel for the respondents that these letters were not issued by the competent authority is not of any relevance for grant of disability pension. What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 and 2 of Appendix-II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix-II of Rule 173. We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 upto date. For future disability pension the respondent may conduct another medical board to assess the percentage of disability of the petitioner. Arrears of disability pension be paid to

the petitioner within a period of 8 weeks. If the same are not paid within 8 weeks the petitioner shall be entitled to the interest at the rate of 9% on the amount of arrears. With these directions the writ petition is allowed.

9. The Special Leave to Appeal (Civil) No. 24171/2014 filed against the said judgment had also been dismissed by the Apex Court by judgment dated 04/01/2008.

10. The learned counsel for the appellants placed reliance on the Division Bench judgment of the Delhi High Court in Ex-Gunner Hoshiar Singh v. Union of India and Others [WP (C) No. 2021 of 2013] decided on 15/10/2004, which has been brought on record as Ext. R3(b). In the said case, since premature discharge of the petitioner was effected on his own request before fulfilling the conditions of his enrolment, neither service pension nor disability pension was granted to him. The petitioner has made a claim for disability pension after 26 years of his discharge. The Court also took the view that the petitioner has not come with clean hands. It is useful to quote paragraphs 6 and 7 of the said judgment.

6. Considering the facts and circumstances of the case, we are of the considered opinion that the petitioner sought to bring into evidence record with interpolations and a document, which in fact does not exist. The petitioner has not come to the Court with clean hands. In this connection, reference may be made to the decision of this Court in Satish Khosla Vs. M/s Eli Lilly Ranbaxy Ltd. and another, as also to the decision of the Supreme Court in The Chancellor and Another Vs. Dr Bijayananda Kar and Others, wherein under similar circumstances the Supreme Court observed that if a person does not come to the Court with clean hands the petition could be thrown out on that ground.

7. On going through the records also we find that the petitioner is not entitled to grant of disability pension as the petitioner was discharged of his own request and not on medical ground. The petition is also filed after 26 years of his discharge and, therefore, there is not only inordinate and unexplained delay but the records of the case also came to be destroyed by the respondents due to long passage of time." The said case was dismissed substantially on the aforesaid two reasons.

11. Learned counsel for the appellants also contended that the disease cannot be said to be attributable to military service. He has referred to the counter-affidavit where it was pleaded that the Medical Board reported that the disease is not attributable to military service. Learned counsel for the appellants, when confronted with the report of the Medical Board, which is part of the record as Ext. P3, could not point out any such recommendation of the Medical Board. On the other hand, the learned counsel for the respondent/writ petitioner has rightly relied on the judgment of the Apex Court reported in Dharamvir Singh Vs. Union of India (UOI) and Others, , in which the relevant paragraphs 16 to 20 are extracted below:

16. Regulation 173 of the Pension Regulations for the Army, 1961 relates to the

primary conditions for the grant of disability pension and reads as follows:

173. Primary conditions for the grant of disability pension.-- Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.

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

17. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual: (i) who is invalided out of service on account of a disability which is attributable to or aggravated by military service, and (ii) who is assessed at 20% or over disability unless otherwise it is specifically provided.

18. A disability "attributable to or aggravated by military service" is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix-II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.

From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

19. "Onus of proof is not on the claimant as is apparent from Rule 9, which reads as follows:

9. Onus of proof.-- The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits are to be given more liberally to the claimants.

20. With respect to disability due to diseases Rule 14 shall be applicable which as per the Government of India publication reads as follows:

14. Diseases.-- In respect of diseases, the following rule will be observed--

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) 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 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.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

20.1. As per Clause (b) of Rule 14 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 military service.

20.2. As per Clause (c) of Rule 14 if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

12. It is also argued by the learned counsel for the appellants placing reliance on Rule 178 of the Regulations which pertains to Manifestation of Disability after an individual is discharged within a period of seven years from the date of discharge. Rule 178 of the Regulations, being not applicable in the present case, the reliance placed by the learned counsel for the appellants has no basis. In view of the proposition as laid down in the said case, it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits are to be given more liberally to the claimants.

In view of the aforesaid decision, we are of the view that the learned Single Judge committed no error in directing for grant of disability pension to the petitioner/respondent in this appeal, as per the recommendation at Ext. P3 and hence the writ appeal is dismissed.