

(2014) 07 SHI CK 0105
In the High Court Of Himachal Pradesh
Case No : LPA No. 164 of 2007

Union of India

APPELLANT

Vs

Ram Krishan

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2014) 07 SHI CK 0105

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Sandeep Sharma, Assistant Solicitor General of India, Advocate for the Appellant; Rita Goswami, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The writ-respondent has filed this appeal against judgment dated 22.6.2007 passed by learned Single Judge in CWP No. 213 of 2006 whereby he allowed the petition and directed the grant of disability pension to the writ-petitioner w.e.f. 1.2.2005.

2. The brief facts as necessary are that the writ petitioner was enrolled in the Indian Army on 8.10.1979 and was suffered battle casualty on 5.1.2002, resulting in his discharge after completion of 25 and 106 days of service. The writ petitioner was placed in the low medical classification after holding Medical Board. He was subsequently asked to appear before the Re survey Medical Board on 4th December, 2004. He was declared invalided and recommended him "fit to release from service in medical category S, H, A2 (P) P, E with effect from 31.1.2005. His disability was declared attributable to army service and was recorded more than 30%. He was discharged on 31.1.2005 and the reason of discharge was shown as "completion of tenure of his service" under Army Rule 13 (3) and was granted service pension of Rs. 5643/- per month with effect from 1.2.2005. He was not granted disability pension even though his disability was assessed at more than 30% which was attributable to the Army service. He was informed on 7th March, 2005 that since he was discharged on compassionate

ground he was not entitled to the disability pension.

3. The writ petitioner had submitted application for discharge from service on compassionate grounds on 13.10.2004 which was approved by the Officer In-charge Records on 2.12.2004 and accordingly, he was transferred to pension establishment under Item No. 1(i) (b) of the table annexed to Rule 13 (3) of Army Rules, 1954 after rendering 25 years and 106 days service. On the basis of the recommendations made by his Commanding Officer, 19 Dogra, he was subsequently his discharge was approved by the Officer-in-Charge, Records on 2.12.2004 The petitioner had suffered injury on 23.5.2002 due to mine blast and his disability was assessed at more than 30% and by that time he had already put in 25 years and 106 days service. However, due to the injury he was compelled to make a request on 13.10.2004 seeking discharge from the Army service, which application reads as follows:

From: JC-519627X Nb Sub Ram Krishan

D Copy, 19 DOGRA,

C/O 56 APO

Through: Company Commander, D Copy

19 DOGRA,

C/O 56 APO.

(Through proper channel).

Subject:-REQUEST FOR DISCHARGE FROM ARMY SERVICE.

Respected Sir,

1. With due respect, I Nb Sub Ram Krishan am presently serving in "D" Copy, 19 DOGRA. My request is as under:-

2. I am the permanent resident of Vill. & P.O. Saroh, Tehsil Ghumarwin, Distt. Bilaspur (HP). I was enrolled in the Army on 18 Oct., 1979. Now I have completed my 25 years of Military Service. Now I want to discharge from Army Service due to reasons mentioned below:-

(a) My wife is ill since last 5 years and she is under treatment at Civil Hospital. Due to this reason my children's education is also getting hampered.

(b) I am unable to do hard work of the Army.

(c) I am having 20 Kanal agricultural lands which is barren without its look after .

3. Keeping in view of the facts above mentioned, I may please be granted the permission to discharge from Army Service.

Yours Obedient Soldier, Sd/- xx xx xx (JC-519627X Nb Sub Ram Krishan)

Dated: 13 Oct. 2004.

RECOMMENDED/NOT RECOMMENDED

RECOMMENDED/NOT RECOMMENDED

4. The learned Single Judge after taking into consideration the aforesaid letter dated 13.10.2004 concluded that though the writ petitioner had made a request for discharge, the same could not be considered as voluntary retirement as the same was based on medical grounds. Therefore, the case of the petitioner would fall under Rule 13 (3) II (ii) and on that basis he would be entitled to get disability pension. Reliance was also placed upon the judgment of the Division Bench of the Delhi High Court in Ex. Subedar Baljor Singh vs. Union of India and others 1997 LAB I.C. 1818 for reaching the aforesaid conclusion.

5. Now, in so far as the decision in Baljor Singh's case (supra) is concerned, the facts thereof are clearly distinguishable as in that case the discharge was not sought on compassionate grounds as was sought in the instant case. Therefore, in this backdrop, the only question which necessarily arises for consideration is as to whether on account of seeking discharge on compassionate ground, the writ petitioner loses his right to claim disability pension although such disability had been attributable and aggravated on account of military services. The answer to this is found in the provisions as contained in the Pension Regulations 173, 173A, 183 and 186 which read as under:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated 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 percent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the Rule in Appendix II.

173-A. Individuals who are placed in a lower medical category (other than "E") permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note

183. The disability pension consists of two elements viz., service element and disability element which shall be assessed as under:

1. Service element:

Note:

(2) Disability element: xxx xxx xxx

186. (1) An individual who is invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date if falls below 20 per cent. He shall, however, continue to draw the service element of disability pension.

6. From a combined reading of the above provisions, it would appear that there are two elements of disability pension-service element and disability element. The disability pension is granted where the individual is invalidated out of service on account of disability which is attributable to or aggravated to the military service in non-battle casualty and the same is assessed at 20% or more. Under Regulation 173A, individuals placed in lower medical category (other than "E") permanently and discharged in the circumstances mentioned therein are also "deemed to have been invalidated from service" for the purpose of entitlement rules laid down in Appendix II. Regulation 183 lays down the manner in which the service element and disability element are to be calculated for the purpose of determining the amount of disability pension. Under Regulation 186 where individual is invalidated out of service with a disability attributable to or aggravated by service but the same is assessed less than 20%, he is entitled to only service element of disability pension.

7. From a further perusal of the aforesaid provisions, it is clear that invalidating from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than "A" and are discharged because no Alternative or Shelter Appointment can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.

8. It is admitted case of the parties that at the time of recruitment the writ petitioner did not have any disability and suffered injury on 23.5.2002 due to mine blast while discharging his official duty, undisputably thereafter was assessed more than 30%. Once the petitioner was in lower medical category according to Rules 1 & 2 of Appendix II of Pension Regulations 173, he was required to be treated as having been invalidated from service.

9. The appellant would then contend that the writ petitioner was discharged from service due to domestic problem on compassionate grounds as had been reflected in his letter dated 13.10.2004 and, therefore, it cannot be said that the writ petitioner was interested to continue in his services whereas the appellant retained him in service on sheltered employment in the low medical category till

the completion of his terms of his engagement. This submission deserves rejection for the simple reason that it is undisputed that the writ petitioner has suffered disability to the extent of more than 30% and apart from other reasons given in his request for discharge, one of the reasons was also that the writ petitioner was not able to perform his duties as well in the same manner which he had been doing earlier which essentially meant that he was making a clear reference to the disability suffered by him. Being a committed soldier, the writ petitioner wanted to serve the Nation but at the same time did not want his disability to be a hindrance in the service, particularly when it had begun to take its toll which may have further caused frustration in the mind of the writ petitioner. The writ petitioner cannot be bogged down to the literal interpretation of his letter and word by word dissection of the same, rather the intention of the letter would have to be gathered. Even otherwise, it has not been disputed that the disability suffered by the writ petitioner occasioned when he was serving the Nation and wherein he suffered more than 30% disability which cannot go unrewarded.

10. In view of the aforesaid discussion, we find no merit in the appeal and the same is accordingly dismissed, so also the pending applications, if any, leaving the parties to bear their own costs.