

(2010) 12 UK CK 0044
In the Uttarakhand High Court
Case No : Special Appeal No. 30 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Aan Singh

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Army Pension Rules, 1961 — Rule 7

Pension Regulations for Army, 1961 — Regulation 118, 173

Citation : (2007) 1 UC 347

Hon'ble Judges : J.S. Khehar, C.J.; Tarun Agarwala, J

Bench : Division Bench

Advocate : Vikas Pandey, for the Appellant; S.K. Posti, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—Through the instant special appeal, the Appellants have assailed the order passed by a learned Single Judge of this Court on 24.08.2006, vide which, Writ Petition (S/S) No. 296 of 2004 was allowed. A perusal of the order dated 24.08.2006 reveals, that the learned Single Judge set aside two orders passed by the Appellants dated 30.11.1977 and 30.03.1981. By the former order, the claim of the Respondent for disability pension was declined. By the later, the appeal preferred by the Respondent on the administrative side was rejected. As a result of the order passed by this Court on 24.08.2006, the Respondent was held to be entitled to disability pension.

2. The solitary submission, sought to be substantiated through the instant special appeal is, that in the facts and circumstances of the case of the Respondent, he could not have been granted the benefit of disability pension.

3. In order to appreciate the veracity of the submission advanced by the learned Counsel for the Appellants, it would first be necessary to deal with the factual background of the controversy. In this behalf, it would be pertinent to mention that the Respondent was employed as a Sepoy in the Indian Army on

04.03.1969. He was assigned to the artillery regiment. The Respondent was deployed for active duty in the war, which took place between India and Pakistan in 1971. In the first instance, he was posted in West Bengal, i.e. on the border of East Pakistan. Thereafter, the Respondent was deployed on the western border, wherein he was deployed at Srinagar. It is the case of the Respondent, that on account of his involvement in the aforesaid war, his ears came to be substantially affected, leading to extreme deterioration in his hearing capacity. During the course of his treatment, he claims to have been admitted at the Military Base Hospital at Udhampur in Jammu, where he got treatment. Despite having been shifted from one army hospital to the other, the Respondent could not be cured of his hearing disability, eventually leading to his being medically categorised as "EEE". The instant medical category is awarded to an individual, who suffers disability, which is beyond 40%. Based on the aforesaid disability, the Respondent was discharged from military service on 07.09.1977. It is, therefore, apparent that the Respondent had rendered 8 years and 187 days of service in the army, at the time of his discharge.

4. On account of the fact, that he had been discharged on medical grounds, the Respondent claimed disability pension. This claim, made by the Respondent, was initially declined by an order dated 30.11.1977. Dissatisfied with the order passed on 30.11.1977, the Respondent preferred an appeal. The appeal, preferred by the Respondent, was however dismissed on 30.03.1981. It is, therefore, that the Respondent preferred Writ Petition No. 296 of 2004 (S/S). While adjudicating upon the controversy in hand, this Court allowed the claim of the Respondent by an order dated 24.08.2006.

5. The orders dated 30.11.1977 and 30.03.1981 are a part of the record of the proceedings. A perusal thereof reveals, that the solitary basis for declining the claim of the Respondent for disability pension was, that the cause of his invalidment was neither attributable to, nor aggravated by military service. The sequence of facts, narrated in the pleadings of the instant case, reveal, that in the opinion of the medical board (which has been appended to the instant special appeal), it was expressly recommended that the Respondent was entitled to invalidment pension. Secondly, in the first very column of the report of the medical board, the opinion expressed by the medical board against the query, "did the disability/ies exist before entering service?", the response of the medical board was in the negative. Thirdly, when asked, learned Counsel for the Appellants could not dispute the fact, that at the time of the induction of the Respondent into army service, no note had been recorded that he suffered from the disease under reference at the time of his induction into service. In the opinion of the medical board (available on the record of this case), it has also not been mentioned, that the disease suffered by the Respondent could not have been detected at the time when the Respondent was enrolled into military service.

6. In identical facts and circumstances, as have been noticed herein above, a

Division Bench of this Court in *Union of India v. Madan Singh Rawat* (Special Appeal No. 11 of 2006 decided on 01.12.2009), after analysing the provisions of Regulation 173 of the Pension Regulation of Army, 1961 (Part-I) and Rule 7 contained in Appendix II of the Pension Regulation for the Army, 1961, has arrived at the conclusion, that the Respondent (in the aforesaid special appeal) was entitled to disability pension. For the same reasons, as have been expressed while disposing of Special Appeal No. 11 of 2006, we are satisfied that the Respondent herein is also entitled to disability pension. In arriving at the aforesaid conclusion, we have relied on the facts depicted in the foregoing paragraph, which demonstrate, that the provisions of the Rule and Regulations mentioned above are fully satisfied.

7. As against the instant determination, the solitary contention advanced at the hands of the learned Counsel for the Appellants is based on the Handbook on Pension Regulations for the Army-1961- Part I, wherein reliance has been placed on Regulation 118 contained in Chapter 3. Regulation 118 is being extracted hereunder:

118. An individual who intentionally aggravates his disability or retards its cure shall, on being discharged as medically unfit for further service on account of such a disability, be ineligible for any pension or gratuity.

8. During the course of hearing, learned Counsel for the Appellants invited our attention to certain pleadings contained in the counter affidavit filed by the Appellants, suggesting that, the Respondent did not accept the treatment offered to him for curing his disability. In fact, reliance has also been placed on the opinion of the medical board, wherein it has been depicted, that the Respondent would have been sufficiently cured, had he accepted the treatment offered to him. Based on Regulation 118 (extracted herein above), it was the vehement contention of the learned Counsel for the Appellants, that the Respondent had been rendered ineligible by his own action and conduct.

9. We have noticed the aforesaid contention advanced at the hands of the learned Counsel for the Appellants, on account of the fact that, the same was the sole plea raised at the hands of the Appellants, during the course of hearing of this case. We are, however, not inclined to examine the merits thereof. Firstly because, neither of the two impugned orders dated 30.11.1977 and 30.03.1981 were based on Regulation 118, for denying the benefit of disability pension to the Respondent. In this behalf, reference may be made to the decision rendered by the Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , wherein in paragraph 8, the Apex Court recorded as under:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time

it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

Since it is only open to us to determine the validity of the impugned orders on the basis of the grounds recorded therein and since Regulation 118 was not one of the grounds, on the basis of which claim of disability pension of the Respondent came to be declined, it is not possible for us to allow the Appellants to raise the instant plea at the present juncture. Secondly because, even in the counter affidavit filed at the hands of the Appellants (in response to the writ petition filed by the Respondent), no reference was made to Regulation 118 (aforementioned) nor was the claim raised by the Respondent contested on the basis thereof. And thirdly because, even in the grounds of appeal raised in the present special appeal, there is no reference; whatsoever to Regulation 118, relied upon by the learned Counsel for the Appellants in order to substantiate his solitary contention. On account of the aforesaid three reasons, we are satisfied that it is not necessary for us to adjudicate upon the present controversy on the basis of Regulation 118 contained in Chapter 3 of the Handbook on Pension Regulations for the Army-1961-Part I.

10. It would be unfair to the learned Counsel for the Appellants, if we do not consider another submission advanced by the learned Counsel for the Appellants, namely, that although the Respondent was invalidated out of service in the year 1977, he had approached this Court (so as to claim disability pension) only in the year 2004. The contention of the learned Counsel for the Appellants was, that the instant claim for disability pension, should have been rejected at its outset, on account of the delay and laches.

11. This plea is definitely not available to the Appellants, firstly, because pension is receivable by an individual at the end of every month. Accordingly, afresh cause of action arises to a pensioner at the end of every month. Secondly, the Appellants did not press the objection of delay and laches before the learned Single Judge, inasmuch as, the same has not been dealt with in the impugned order passed on 24.08.2006, whereby, Writ Petition No. 296 of 2004 (S/S) was disposed of. It is not even the plea raised at the hands of the Appellants, in the grounds of appeal, that the issue of delay and laches, though pressed before the learned Single Judge, has remained unadjudicated at his hands. For the aforesaid

reasons, we are satisfied that there is no merit even in the instant contention advanced at the hands of the learned Counsel for the Appellants.

12. In view of the conclusions drawn by us herein above, we direct the Appellants to disburse disability pension to the Respondent within six weeks from the date of receipt of a certified copy of this order.

13. The instant special appeal is accordingly dismissed.