

(2010) 05 UK CK 0053
In the Uttarakhand High Court

Union of India (UOI) and Others

APPELLANT

Vs

Komal Singh

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2010) 2 UC 817

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—Since disability pension was denied to the respondent, he approached this Court by filing Writ Petition (S/S) No. 436 of 2005. The aforesaid writ petition was allowed by a learned Single Judge of this Court on 19.12.2006.

2. The order rendered by the learned Single Judge on 19.12.2006 while disposing of Writ Petition (S/S) No. 436 of 2005 is subject matter of challenge at the hands of the appellants.

3. The sequence of facts pleaded in the aforesaid writ petition, as also, the contest thereto, contained in the reply filed by the appellants by way of counter affidavit narrows down the controversy between the parties to the issue whether the disability suffered by the respondent can be attributed to his employment with the Army. Whilst it is the case of the learned Counsel for the appellants that his disability is not based on the performance of his duties with the Army, nor is it attributable to the same. The case of the respondent is that his disability assessed at 20% by the appellants, was directly the outcome of the negligence of the medical facilities provided to him by the appellants, more particularly, at the Army Hospital, Roorkee.

4. Insofar as the instant issue is concerned, the respondent had asserted the factual position in paragraphs 4 and 5 of the writ petition. Paragraph 4 and 5 are accordingly being extracted hereunder:

4. That the petitioner was working in his newly built house in village Motadhak during the leave period on a ladder and the ladder broken and the petitioner has fallen down on the earth and thus his left hand was fractured so he had joined Army Hospital Roorkee where his hand was plastered. But bone of his left had wrongly joined, thereafter he has sent to G.R.R.C. Lansdowne for joining his duty. The G.R.R.C. Lansdowne gave him the duty of mule catering, when he was catering the mules he was fallen down on earth. Thus, the place of fracture of his left hand got swelling of which he has reported to M.H. Lansdowne which referred him to Army Hospital Dehradun for operation where his hand was operated and thus the Military Doctors have fixed iron rods in his left hand thereafter he was sent one month leave to his home.

5. That in accordance with the Army order he had joined Hospital which has sent him again to G.R.R.C. Lansdowne to join his duty and the G.R.R.C. Lansdowne has sent him Patharchatta Military Farm Haldwani, District-Nainital in the year 1990 where he has served as a Rifleman in the Military Farm Patharchatta for about 8-9 month, thereafter 12 Battalion G.R.R.C. Lansdowne called out him and sent to Dhara M.P. in the year 1991-92 where he has served more than 1 year, thereafter 12 Battalion G.R.R.C. Lansdowne C/o 56 A.P.O. in January 1992 he was surgically / Medically Boarded out and sent him to G.R.R.C. Lansdowne and the G.R.R.C. Lansdowne had obtained his photo and the photo of his wife with signatures for medical pension form of the Army, but he was relieved from service on 29-02-1992 without pension to his home, but the G.R.R.C. has given him his group insurance fund and G.P.F. only. But the G.R.R.C. has not provided him his service pension and pensionary benefits along with service gratuity.

In response to the aforesaid, the reply contained in the counter affidavit to the aforesaid paragraphs was incorporated in Paragraphs 7 and 8 of the counter affidavit. Paragraphs 7 and 8 of the counter affidavit are accordingly being extracted hereunder:

7. That, the para No. 4 of the writ petition is partly admitted. The petitioner was accorded 64 days annual leave w.e.f. 24 March, 1989 to 26 May, 1989. It is admitted that the petitioner was admitted to the Military Hospital Roorkee on 2nd May, 1989 and was discharge on 8 May, 1989. The nature of injury was Fracture Radius and Ulna (LT). Injury report was initiated by the Military Hospital Roorkee dated 03 May, 1989 wherein it was declared that the injury of the petitioner was not attributed to military service. The true copy of the report dated 3.5.89 is annexed as Annexure No. C.A.-1 for the kind perusal of the Hon"ble Court. A court of inquiry was held and the petitioner was placed in low medical category CEE (Temporary) w.e.f. 24 June, 1989 for six months and a medical board was held at military hospital on 24th June, 1989 the true copy of the medical board proceedings are annexed as Annexure No. C.A.-2 for the kind perusal of the Hon"ble Court. The petitioner was again admitted to military hospital Lansdown on 3 July 1989 and subsequently transferred to military hospital Dehradun on 5th July 1989. The petitioner was accorded 4 days sick leave w.e.f. 30 August, 1989

to 10 October, 1989 by military hospital Dehradun with the direction to report back on expiry of leave. The petitioner reported at military hospital on 10th October, 1989. His initial medical category was reviewed after six months w.e.f. 24th December, 1989 and further he was placed in low medical category (Temporary) for another six months. The petitioner stated that he was detailed for catering of mules, which is incorrect the petitioner after the hospitalization period he was given normal military duties as authorised to low medical category personnel and not for catering mules as no such record is available. Hence the statement of the petitioner is incorrect.

8. That, the para No. 5 of the writ petition is admitted to the extent that the petitioner joined the hospital and transferred to military hospital lancedown for completion of hospitalisation documents. The petitioner was again brought before medical board for re-categorization and subsequently placed in low medical category. The true copy of the medical board report is annexed as Annexur No. C.A. -3 for the kind perusal of the Hon''ble Court. The petitioner was asked for retention of service due to the reason that he was placed in low medical category and the petitioner in the instant case submitted his willingness to serve. The competent authority did not recommend to the petitioner for retention in service because no sheltered appointment was available keeping in view of his disability as per Army Order 46/80 and due to this reason the petitioner was discharge from service w.e.f. 29 February, 1992 (AN) in terms of Army Rule 13(3)(III)(V) the true copy of the same is annexed as Annexure No. C.A.-4 for the kind perusal of the Hon''ble Court. It is pertinent to mention here that a show cause notice was also served to the petitionr and the same was also disposed of in terms of Army Order 46/80 by stating that the petitioner in the instant writ petition is not in a position to render is essential duties as infantry solder. The true copy of the same is annexed as Annexure No. C.A.-5 for the kind perusal of the Hon''ble Court. The petitioner was also asked for to urged against contemplated release from service with in seven days from the dated of issue of show cause notice but the petitioner in the instant petition fails to reply to the show cause notice. There being no suitable sheltered appointed available, he was not recommended for rentention his service by the competent authority and accordingly he was discharge. The true copy of the discharge order is annexed as Annexure No. C.A.-6 for the kind perusal of the Hon''ble Court. The petitioner was again brought before release medical board as per army order 3/89 and a medical board was held on 10 January, 1992 and it was found that there is 20 percent disability. The true copy of the same is annexed as Annexure No. C.A.-7 for the kind perusal of the Hon''ble Court. The claim of the petitioner for disability was sent to the controller of defense account and the same was also rejected through their letter 26th August, 1992. The true copy of the same is annexed is Annexure No. C.A.-8 for the kind perusal of the Hon''ble Court. The petitioner suffered with the injuries which are not attributable to military service in terms of Para 173 Pension Regulation. The copy of the same is annexed as Annexure No. C.A.-9 for the kind perusal of the Hon''ble Court. It is further pertinent to mention here that

the decision of the Chief Controller of Defense Account was also intimated to the petitioner vide Government order dated 31 August 1992 is annexed as Annexure No. C.A.-10 for the kind perusal of the Hon''ble Court. The competent authority is empowered to review/modify/alter the initial release medical board of an individual in terms Para 17 of entitlement Rule 1982. The true copy of the same is annexed as Annexure No. C.A.-11 for the kind perusal of the Hon''ble Court. That, the para No. 6 of the writ petition I wrong as stated. The last pay drawn was 1040 basic + Rs. 15 as classification + dearness allowance.

5. Having considered the aforesaid pleadings contained in the writ petition and the counter affidavit, it clearly emerges that the grievance of the respondent was that his disability occurred as a consequence of improper treatment given to him at the Army Hospital, Roorkee. In this behalf, his assertion was that after he suffered a fracture on his left hand, he sought treatment at Army Hospital, Roorkee, but on account of the wrong treatment given to him, the bones of his left hand were wrongly joined requiring him to undergo further treatment. During this period, the respondent was placed in Low Medical Category. The aforesaid situation persisted even after further treatment was given to the respondent in other Army Hospitals. In the aforesaid view of the matter, there is no doubt, in our mind, that the disability suffered by the respondent was on account of the negligence of the appellants in extending proper medical facilities to the respondent. As such, we have no hesitation in concluding that the same must be deemed to be attributed to the Army authorities. Thus viewed, we are satisfied that the conclusion drawn by the learned Single Judge in the impugned order dated 19.12.2006 was fully justified.

6. For the reasons recorded hereinabove, we find no merit in the instant Special Appeal and the same is accordingly dismissed.