
(2002) 02 PAT CK 0130
In the Patna High Court
Case No : L.P.A. No. 1110 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Muneshwar Prasad

RESPONDENT

Date of Decision : 07-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0130

Final Decision : Allowed

Judgement

1. In spite of valid service no body appears on behalf of other side.
2. The appeal is barred by limitation.
3. After having heard learned Counsel for the Union of India, we are of the view that sufficient ground has been made out to condone the delay. Accordingly the delay in filing the appeal is condoned.
4. The appeal is directed against the order, dated 25.6.2001 passed by the learned single Judge whereby he has allowed the claim of the writ Petitioner-Respondent for grant of disability pension in terms of Rule 173 of the Pension Regulations for the Army, 1961 (Part I) (hereinafter referred to as "the Regulation").
5. The facts for disposal of the present application are that the private Respondent joined the army service as a Sepoy on 21.8.1972. During the course of service he suffered from major health problem and was examined by a Medical Board and the Medical Board in its report dated 28th October-found that disability is constitutional in nature. In other words the Medical Board found that the disability, is not such which can be attributable, to military service; or existed before or arose during military service and remained aggravated during the military service. On the basis of the said report on 19.1.1981 the Petitioner was discharged from the service on the ground that disability was not attributable to military service.

6. Thereafter it appears that he preferred an appeal which was dismissed in 1983. He again preferred appeal which was also dismissed in 1985. Thereafter in 1997 he approached the Raksha Family Pension Adalat and the Adalat by the order dated 2.12.1997, as contained in Annexure-3 to the writ petition, rejected the claim of the Petitioner on the ground that the Petitioner was discharged from the Army Service w.e.f. 19.1.1981 and the appeals filed by the Petitioner had already been dismissed. Thereafter the Respondent again pursued the matter for grant of disability pension and on 29.3.2000 the Assistant Record Officer for OIC Records, Jabalpur informed the Petitioner that the claim has already, been rejected and he is not entitled to disability pension; a copy of which has been, annexed as Annexure-5 to the writ petition. Thereafter the Respondent filed a writ application before this Court which has been allowed by the learned single Judge.

7. Learned Counsel for the Union of India-Appellant raised two points-firstly he submitted that the private Respondent has approached this Court after a long time after passing of the adverse order against him and as such on the ground of delay itself the writ should not have been entertained; secondly he submitted that under the provisions of Rule 173 of the Regulation the person is entitled to disability pension when the same is attributable to the military service. The Medical Board found that disability was not attributable to military service on the other hand the disability was constitutional in nature and in that view of the matter the private Respondent was not entitled to disability pension. Learned single Judge ignoring the opinion of the Medical Board without any basis ordered for payment of disability pension. In our view both the submissions are well founded and the order of discharge was passed in 1981 and that attained finality in 1985 after dismissal of the appeal. Thereafter the matter has been raised by the private Respondent after 12 years in 1997 by filing a petition before the Raksha Family Pension Adalat, which was also rejected on the ground that the matter has already been considered and his claim for disability pension has been rejected. No explanation has been offered by the writ Petitioner/private Respondent to approach this Court after such a long time. Filing a petition before the authority which has already rejected the claim will not explain the delay in approaching this Court. Thus on the ground of delay and laches the writ application was fit to be dismissed.

8. According to the aforesaid Regulation the disability pension is permissible only when the disability has occurred while in military service and is attributable to military service; or existed before or arose during the military service and has been aggravated during military service. A copy of the medical report is annexed as Annexure 1 to the writ application which shows that the disability was not because of the aforesaid two reasons on the other hand the disability was constitutional. There is no finding of the Medical Board that that disability got aggravated while the Petitioner joined the military service.

9. On merits also the private Respondent has no case. Similar question was

considered by the Apex Court in the case of Union of India (UOI) and Another Vs. Baljit Singh, and held that report of the Medical Board should not be brushed aside lightly and unless there is a cogent reason to reject the same, the same should be accepted. In that case it was held that:

It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from Clauses (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder require to be observed. Clause (c) provides that 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. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion. However, having regard to the facts and circumstances of this case, we do not think that it is an appropriate case for interference.

10. The present case is fully covered by the law laid down by the aforesaid judgment of the Apex Court as the Medical Board does not show that the disability was attributable to the military service. The Respondent is not entitled to the disability pension. The learned single Judge has not doubted the Medical Board but has opined on the basis of certain observations in the medical report that the disability occurred while the Respondent was in military service. In our view there was no reason to disbelieve the medical report and as according to the medical report disability pension is not attributable to military service, the writ Petitioner-Respondent is not entitled to disability pension in terms of the aforesaid Regulation. In the result the appeal is allowed and the order of the learned single Judge is set aside.