
(2007) 01 DEL CK 0220

In the Delhi High Court

Case No : Writ Petition (C) NO. 1807 of 2005

Vinod Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 01 DEL CK 0220

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : D.K. Sharma, for the Appellant; Arun Bhardwaj and K.M. Rai, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The petitioner was enrolled in the Indian Army in the rank of Sepoy in September 1991. After his enrolment he went for his training which he successfully completed. He was found to be medically fit in all respects and successfully completed the medical and physical tests prescribed for such selection. After completion of his training he was posted to different places and on 10.4.1994 he was posted to Deemapur, Nagaland where he reported at 3 Corps. Ordinance Maintenance Company. The petitioner started having health problems in the year 1996 and was admitted to different hospitals for treatment and was placed in Low Medical Category "CEE" (temporary). The petitioner was again upgraded in June 1996 to "BEE" (temporary) at military hospital, Jodhpur. Thereafter, he was recategorised in medical category "EEE" (permanent) in September 1996 and was brought before the Release Medical Board/Invalidating Medical Board at Nasirabad from where he was discharged on medical grounds and was verbally told that his disability has been assessed at 60%, though no copy of the Medical Board proceedings was given to the petitioner. The petitioner moved a representation requesting the authorities for providing him with the medical report but the same was not supplied resulting in filing of a writ petition

bearing no. 4793/1997 by the petitioner, which was disposed of by the Court vide order dated 6.12.1997 directing the respondents to furnish a copy of the Medical Board proceedings which were intimated to him and he was also informed vide letter dated 2.1.1998 that his claim for disability pension has been rejected by the PCDA (P) Allahabad. The petitioner filed another writ petition being W.P.(C) NO. 1908/1998 before this Court praying for issuance of direction to the respondents to reinstate the petitioner with all consequential benefits. However, the same was withdrawn by the order of the Court dated 22.4.1998 with liberty to approach the respondents by filing a statutory remedy. The petitioner filed a statutory petition which was not disposed of, thus, compelling the petitioner to file another writ petition bearing no. 2101/2001 praying for reinstatement and for subjecting the petitioner to a Re-Survey Medical Board. The above writ petition was again disposed of with liberty to the petitioner to make a representation to the authorities. The said representation was disposed of with liberty to the petitioner to make a representation to the authorities. The said representation was filed by the petitioner after order of the Court dated 23.10.2001 and the same is stated to be still pending and has not been disposed of, resulting in filing of the present writ petition. The petitioner in the present writ petition under Article 226 of the Constitution of India prays for quashing of the order dated 11.12.1997 vide which the claim of the petitioner for grant of disability pension has been rejected and further with a direction to the respondents to grant to the petitioner the said relief from the date of his discharge from the military service.

2. A counter affidavit was filed by the respondents wherein they have taken up the following defense:

That the petitioner was enrolled on 12.10.1991 and invalided out from service w.e.f. 21.10.1996 on account of "PERSONALITY DISORDER" under Army Rule 13 93) III (iii). His total service in the Army is thus works out 5 years and 10 days.

C. That Invaliding Medical Board that had examined the petitioner on 15.10.1996 and had opined that the invaliding disease of the petitioner is neither attributable to nor aggravated by military service as his disability is not related to military service.

D. That the claim of the petitioner for disability pension was rejected vide letter no. G3/87/201/9-97 dated 11.02.1997 by the PCDA (P) Allahabad in consultation with Medical Advisor. The petitioner did not submit within the statutory period any appeal against the rejection of his disability pension.

E. That in compliance of the order dated 23.04.2001 passed by this Hon'ble Court in CWP No. 2101/2001, the petitioner's representation dated 09.06.1998 was examined and disposed of vide AOC Records letter no. 6933745/DP/Pen/LC/CC dated 05.07.2001. This aspect has not been disclosed by the petitioner in the instant writ petition. Typed copy of the letter dated 10.07.2001 issued by Respondent No. 3 in this regard is annexed as ANNEXURE R-1.

F. That after three years of disposal of the representation of the petitioner, the petitioner submitted an appeal dated 06.12.2004 against the rejection of his disability pension.

G. That prior to disposal of his said appeal by the competent authority the petitioner, prematurely filed the instant writ petition in January 2005. The writ petition filed by the petitioner is liable to be dismissed on this ground itself.

H. That the appeal date d06.12.2004 filed by the petitioner has already been processed to the competent authority vide AOC Records letter No. 6933745/Pen/Dis - III dated 30.05.2005. Typed copy of the said letter and letter dated 31.03.2005 are annexed as ANNEXURE R-2 (colly).

I. That decision of the competent authority on the said appeal filed by the petitioner is still awaited.

3. During the course of hearing the respondents had also produced the Records. The averments made by the petitioner are not denied by the records. The petitioner was subjected to the Invaliding Medical Board and the medical board proceedings have recorded the disability of the petitioner to be 20% for 2 years for the disease of "Personality Disorder". In the proceedings of the Medical Board, no family history or any episode of personality disorder or allied diseases was noticed as having occurred prior to his joining the Army. The Board did recommend his being invalided out from service but there is no record before the Court to demonstrate that the petitioner had contracted such a disease; or its symptoms existed or; there was any possibility of such symptoms existing prior to his joining the Army. It is a psychological disorder and "psychosis" has been specified as a disease under Annexure III to Appendix II of the Pension Regulations for the Army, 1961, which is effected by stress and strain of service. The learned Counsel appearing for the petitioner has heavily relied upon the judgment of this Court in the case of Ex. Cfn. Sugna Ram Ranoliya v. Union of India and Ors. 132 (2006) DLT 544 in support of his contention that the disability of the petitioner is attributable to or in any case is aggravated by the military service. We would adopt the said reasoning in support of the view that we are taking in the present case.

4. For the reasons afore-recorded, we allow this petition and direct the respondents to grant to the petitioner disability pension @ 20% disability. However, the arrears would be restricted to the period of 3 years immediately preceding filing of the present writ petition. It will be open to the respondents to subject the petitioner to a Re-Survey Medical Board in accordance with law, if they so desire. The writ petition is accordingly disposed of, while leaving the parties to bear their own costs.