

(2000) 12 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 4633 of 1997

Ex-Sepoy Prem Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Dec. 7, 2000**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: R.L. Anand, J**Bench:** Single Bench**Advocate:** Mr. R.A. Sheoran, for the Appellant; Mr. S.K. Sharma, for the Respondent

Judgement

R.L. Anand, J.

Ex. Sepoy Prem Kumar has filed the present writ petition under Articles 226/227 of the Constitution of India and he has prayed for the issuance of a writ of certiorari seeking quashment of the impugned orders Annexures P-2, P-3, P-4 and P-5, vide which the case of the petitioner for disability pension was rejected by the respondent-authorities. The petitioner has further prayed that a writ of mandamus be issued against the respondents directing them to release the benefit of disability pension.

2. The case set up by the petitioner is that he joined the military service as sepoy in the Mechanical Jat Regiment on 15.9.1978. He served the army for 4 years and 307 days and was discharged on medical ground on 15.5.1983. He was discharged due to the disease known as epilepsy. He made a prayer for the release of the disability pension. This prayer was rejected by the respondent-authority on 30.11.1983. He filed an appeal on 9.4.84 which was rejected on 23.12.1985. He filed second appeal on 12.6.86 and the same was also rejected on 16.2.1987. He had been making prayer for the release of the disability pension but to no effect. Hence this writ petition.

3. Notice of the writ petition was given to the respondents who filed the reply and denied the allegations. According to the respondents the petitioner, of course, was boarded out from the service on medical ground but the disease is neither attributable nor aggravated to the military service. Hence he is not entitled to the benefit of disability pension.

4. I have heard Shri R.A. Sheoran, learned counsel appearing on behalf of the petitioner and Shri S.K. Sharma, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of the case.

5. Admittedly, the petitioner was boarded out from the service on medical ground and the disease noticed was epilepsy.

6. The short point for determination in this writ petition is whether this disease is attributable or has been aggravated when the petitioner was serving the army.

Learned counsel for the respondents submitted that the disease was constitutional in nature and it could not be detected at the time of the enrolment of the petitioner in the army service.

I do not subscribe to the argument raised by the learned counsel for the respondents. The petitioner was medically examined by the Medical Board at the time of his enrolment into army and many arduous medical tests were conducted. The petitioner served the army for about five years. Periodical inspections of the Jawans are conducted. The disease was not noticed. We all know that the Jawans of this country serve the army in difficult conditions. They serve in plains and on mountains and even in heavy rains. Such like diseases invariably are suffered by our Jawans.

7. It is not established on the record nor proved by the respondents that the petitioner was a victim of any disease at the time of his enrolment into the army service. The counsel for the petitioner relies upon a judgment of this Court reported as 2000(2) RSJ 342 : 2000(2) SCT 570(P&H), Union of India and others v. Ex-Hav. Clk. Wishwa Nath. In this cited case also respondent Shri Vishwa Nath suffered disability on account of epilepsy and the Hon"ble Division Bench was pleased to notice that the Jawan was placed in category "A" at the time of his enrolment. He was discharged from the army on account of medical ground. The Hon"ble Division Bench was pleased to draw the inference that this disease is attributable to the army service and could be contracted during military service. The Hon"ble Division Bench upheld the judgment of the Hon"ble Single Bench. The observations of the Hon"ble Division Bench are fully applicable to the facts of the case in hand.

In these circumstances, I allow this writ petition by setting aside the Annexures P-2, P-3, P-4 and P-5 and give the directions to the respondents to release the benefit of disability pension to the petitioner for a period of 38 months prior to the institution of the writ petition and further benefit of disability pension after the institution of

the writ petition, within three months from the receipt of the copy of this order, failing which, the respondents shall also pay interest at the rate of 12%. The petitioner shall appear before the Ro-survey Medical Board as and when called upon by the respondent-authority. There shall be no order as to costs.

8. Petition allowed.