

(1999) 04 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12190 of 1998

Kulwinder Singh No. 4465995 Ex.

Sep.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: April 21, 1999

Acts Referred:

- Pension Regulations for Army, 1961 - Regulation 173

Citation: (1999) 122 PLR 500

Hon'ble Judges: Harjit Singh Bedi, J

Bench: Single Bench

Advocate: Sandeep Bansal, for the Appellant; Anil Malhotra, for the Respondent

Final Decision: Allowed

Judgement

Harjit Singh Bedi, J.

The petitioner was enrolled in the Army on 17th October, 1985 and after completion of his training, was posted to the 10 Sikh Light Infantry. As per the petitioner, he was invalided out of service on the opinion of the Released Medical Board with 30% disability on 8th February, 1991, on the ground that he was suffering from Neurosis ICD 300. The petitioner's claim to disability pension submitted to the Chief Controller of Defence Accounts(P), Allahabad was rejected on the ground that his disability was not attributable to military service and had been assessed at less than 20% and as such, his claim was not tenable in terms of Regulation 173 of Pension Regulations for the Army, 1961 (hereinafter called the Regulations"). This intimation was conveyed to the petitioner vide Annexure P-1 dated 14th August, 1992. The appeal submitted to the C.C.D.A. (P), Allahabad was transmitted to the Government of India, but this too, was rejected and the information conveyed to the Records Office of the Sikh Light Infantry and further to the petitioner vide Annexure P-2 dated 4th January, 1995. The orders Annexure P-1 and P-2 have been impugned in the present proceedings.

2. On notice of motion, a reply has been filed on behalf of the respondents and the broad facts have been denied. It has been pleaded that the petitioner was suffering from Neurosis which was a constitutional disorder and could not be made attributable to military service and that in any case, the extent of disability being less than 20%, disentitled the petitioner to a disability pension in terms of Regulation 173. It has not been denied that the petitioner was, at the time of his enrollment, found to be in good health and no disease of any kind had been noted at that time.

3. After hearing the learned counsel for the parties, I am of the opinion that this petition deserved to succeed. The issue raised in this writ petition had been dealt-with in Gurmukh Singh Vs. Union of India and others, which also pertained to the disease of Neurosis and it has been held by this Court as under-

"Mr. Malhotra's argument that "Neurosis" was a constitutional disorder and, therefore, could not be said to be attributable or aggravated by military service, must now be examined. The Entitlement Rules for Causality Pensionary Awards, 1982 have been attached as Appendix II to the Regulations. Annexure III to the Appendix II with the classification of diseases based on the factors that could result in their onset. Psychoneurosis find mention in sub-categories (b) and (F) as a disease which could be caused by stress and strain as also service in high altitudes. It is the conceded position that the petitioner had served in Jammu and Kashmir soon after this enrollment and a presumption can, therefore, be legitimately drawn that some part of that service would have been at high altitudes in a forward active area. Psychoneurosis has been defined in Black's Medical Dictionary 36th Edition as a general term applied to various disorders of the nervous system and this term has further been elaborated in the definition of Neurosis given in the dictionary. It is, therefore, evident that the Neurosis is a species of Psychoneurosis. In this view of the matter, the respondents argument that Neurosis being a constitutional disorder could not be attributed to military service or aggravated thereby, is to no avail."

4. In this view of the matter, it is apparent that no distinction could be drawn between the present case and the cited one. This petition is, accordingly, allowed, the orders Annexures P-1 and P-2 are quashed, but as there seems to be some dispute with regard to the extent of the petitioner's disability, it is directed that the petitioner will be examined on a convenient date by a competent Medical Board at a hospital close to his residence within a period of four months from the date, that a certified copy of this judgment is supplied to the respondents and if it is found that the petitioner's disability was 20% or more, he would be entitled to disability pension from the date of his fresh medical examination.

5. It has finally been urged by Mr. Bansal that the petitioner was, nevertheless, entitled to the service element of the disability pension even if it was found that his disability was less than 20%. In this connection, he has placed reliance on Regulations 183 and 186. As this matter had not been raised by the petitioner at any stage and not even in the present proceedings, it is not possible to render an

opinion on the issue. However, in the light of the fact that the respondents have been directed to reconsider the petitioner's claim with regard to disability pension. It would be appropriate if the petitioner's claim to the service element of that pension in terms of Regulations 183 and 186, is also considered by the respondents. This order has been made in the light of the fact that even as per the respondents case, the petitioner was not in a fit condition to look after his affairs and that in any case, the claim made by the petitioner relates to the payment of pension. This; petition is allowed in the above terms. No costs. Dasti order.