

(2008) 05 P&H CK 0058

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Thakur Singh, Ex Sepoy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: May 5, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2008) 152 PLR 82

Hon'ble Judges: Mohinder Pal, J; Hemant Gupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Mohinder Pal, J.

The petitioner was enrolled in the Army on September 29, 1983. He was discharged from Army on June 17, 1991 having been placed in low medical category "BBE" (Permanent) on account of onset of disease "Neurosis" with 20% disability.

2. The disability pension claim of the petitioner was rejected on the ground that the disability was considered as of a constitutional disorder by the Release Medical Board, which was neither attributable to nor aggravated by military service and also not connected with the service. Service element of pension was also not granted to the petitioner on the ground that he had not rendered minimum fifteen years qualifying pensionable service. Appeal preferred by the petitioner against the order rejecting his pension claim was also dismissed.

3. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to release the disability pension (service and disability element) to him.

4. In the written statement filed by the respondents, it has been pleaded that the findings of the Medical Board which is conducted by qualified Doctors and recorded

after physical examination of an individual have to be attached importance. It has been stated ♦ that the denial of disability pension to the petitioner is absolutely legal and just.

5. We have heard Mr. Navdeep Singh, Advocate, appearing for the petitioner and Ms. Ranjana Shahi, Central Government Standing Counsel, appearing for the respondents and have gone through the records of the case.

6. Learned Counsel for the petitioner has argued that rejection of the claim of the petitioner for the grant of disability pension for the disease "Neurosis" is illegal and arbitrary as there is specific mention of disease "Neurosis and psychosomatic disorders" and disease "Psychosis and Psychoneurosis" in Annexure III to Appendix II, referred to in Regulation 173 of the Army Pension Regulations, 1961 (Part-I), 1961 (for short "the Pension Regulations").

7. Appendix II, referred to in Army Regulation 173, contains Entitlement Rules for Causality Pensionary Awards, 1982. Annexure III to Appendix II mentions Classification of Diseases. At Clauses B to H, lists of Diseases Affected by Strees and Strain are mentioned. The disease "Psychosis and Psychoneurosis" is mentioned in Clause B and Clause F and disease "Neurosis and psychosomatic disorders" is mentioned in Clause G in Annexure III to Appendix II. The diseases - "Psychosis and Psychoneurosis" and "Neurosis and Psychosomatic disorders" and the disease "Neurosis", from which the petitioner is suffering, are the diseases of mind and relate to functional derangement through disordered nervous system. It is, thus, clear that the disease suffered by the petitioner, is included in the list of diseases suffered by the petitioner, is included in the list of Diseases Affected by Stress and Strain mentioned in Annexure III to Appendix II *ibid*.

8. In the written statement, the respondents have admitted that the petitioner was diagnosed of the said disease during the hospitalization at Military Hospital, Golconda, on April 28, 1986. Subsequently, he was hospitalized at Military Hospital, Pune, 166. Military Hospital, Command Hospital (Northern Command). Udhampur and again at 166 Military Hospital for treatment of the said disease with effect from April 1986 to May 1991. He was downgraded to low medical category CEE (Temporary) with effect from July 30, 1986. He continued to be in low medical category CEE (Temporary), BEE (Temporary) and BEE (Bermanent) and on review he was finally placed in permanent low medical category BEE with effect from May 26, 1986. The onset of the disease was thus during military service. Therefore, the action of the respondents in declining disability pension to the petitioner for the disease "Neurosis", which is attributable to and aggravated by Army service, cannot be upheld. Accordingly, the orders passed by the respondents in this regard are set aside.

9. For the aforesaid reasons, this writ petition is allowed and the petitioner is held entitled to 20% disability pension. Since service element of pension is dependant

upon the disability pension, the petitioner is also held entitled to service element of pension. This pension, with all consequential benefits, will be paid to the petitioner from the date of retirement. However, arrears of pension are "restricted to three years preceding the filing of this writ petition. The respondents are directed to disburse the arrears to the petitioner within three months from the date of receipt of a copy of this order. In case, the arrears are not disbursed within the said period, the petitioner will be entitled to interest at the rate of nine per cent per annum from the date of expiry of three months till the date of payment.

10. This writ petition is allowed in the above terms with no order as to costs.