(2010) 01 P&H CK 0080

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Capt. Paramdeep Singh — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision: Jan. 7, 2010

Citation: (2010) 2 ILR (P&H) 1 : (2010) 158 PLR 194

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Permod Kohli, J.
Questioning the denial of extension in service and grant of disability pension, the petitioner has filed this writ petition challenging both the orders Annexures P-2 and P-3, annexed hereto in this petition.

2. Facts leading to the filing of this petition are briefly noticed. The petitioner was commissioned in Indian Army as 2nd Lieutenant on 11.3.1989. He was posted to 503 ASC Battalion Leh. Petitioner was deputed for an administrative duty.

3. On 2.12.1989, the petitioner was proceeding from his Battalion to another Battalion 528 in the official vehicle. He was himself driving the vehicle. When the vehicle reached near Pathar Sahib Gurudwara, on Leh-Kargil road, it overturned on the hilly terrain. It is alleged by the petitioner that the said accident was on account of mechanical failure. The petitioner and other officials travelling in the vehicle were injured. The petitioner was evacuated to Military Hospital and thereafter to the Command Hospital, Western Command, Chandimandir Cantt.

4. A Court of Inquiry was convened to inquire into the causes of accident. The Court of Inquiry gave following findings:

1. On 02nd Dec. 89 the Veh Jonga No. 84B 27680L of 503 ASC Bn was on bonafide duty. The Veh was going from 503 ASC Bn to Pathar Sahab (Witness No. 1, 2, 3, 4 &

7).

2. The Veh met with an accident near Pathar Sahab at about 1300 hrs. (Witness No. 1, 3 & 4)

3. The Jonga No. 84B 27680L met with an accident due to brake failure. (Witness No. 1, 3, 4, 8 & EME accident report form)

4. 2/Lt Paramdeep Singh was driving the Veh alongwith 3 Ors. (Witness No. 1, 2, 3, 4)

(a) No 13846234 Hav MT RS Yadav

(b) No 13 848867 Nk Jagat Bahadur

(c) No 13894790 Sp Ashu Singh

5. 2/Lt Paramdeep Singh tried to stop the Veh but could not do so because of brake failure. He tried to stop the Veh by bringing it against the hillside. The Veh hit the big boulders and turned over on the right side of the road about 800 Yds ahead of Pathar Sahab (Witness No 1, 2, 3, 4 and 5)

6. 2/Lt Paramdeep Singh sustained major injury on the right writ and the 3 Ors sustained minor braises.

There was no major injury to the 3 Ors. The offer was conscious through out the incident (Witness No 1, 2, 3, 4 & 7)

7. 2/Lt Paramdeep Singh was operated upon on 02nd Dec 89 at 153 GH for compound fracture of the right wrist and tendon and muscle repair of forearm (Witness No. 6)

8. The officer had passed the hill driving test held by 503 ASC Bn on 27th Nov 89. He possessed a Mil driving licence and a Civil Driving licence. (Extract attached)

9. CO 503 ASC Bn had permitted 2/Lt Paramdeep Singh to drive the Vehs. (Witness No 7 and CTC of cert signed by CO)

10. There was no evidence of foul play.

5. On recording the aforesaid findings, the Court gave the following final opinion:

1. The court is of the opinion that SS-33900K 2/Lt Paramdeep Singh of 503 ASC, He was driving the Veh on bonafide duty after having passed the hill driving test on 27th Nov 89.

2. 2/Lt Paramdeep Singh possesses a Mil driving licence; and civil driving licence.

3. The accident occurred due to sudden failure of the brakes and no body is to be blamed.

4. The injury caused to SS-33900K 2/Lt Paramdeep Singh is attributable to Mil Service in field.

5. The loss of Rs. 17266.00 to be borne by state.

The opinion of the Court of Inquiry was accepted by the General Officer Commanding 3 Inf Division with the following observations:

The injury caused to SS 33900K 2nd Lt Paramdeep Singh be attributable to MIL service in FD area.

Apart from Court of Inquiry, Form "IAFY-2008" was also prepared in consultation with the Medical Officer, declaring the injury sustained by the petitioner attributable to Military Service.

6. The petitioner remained admitted in Command Hospital, Headquarters Western Command, Chandimandir till 15.3.1990 and remained on sick leave from 15.3.1990 to 30.4.1990. On his discharge, the petitioner was examined by the medical board and was placed in medical category S1H1A3(U) (T-24) P1E1. He was further advised to undergo fresh medical board for his placement in the final medical category.

7. On 15.10.1990, another medical board was convened. The petitioner was placed in medical category S1H1A3 (U) (Permanent) P1 E1 making him permanently unfit for service. The medical beard, however, recommended the petitioner fit for sedentary/light duties and unfit for duties in field area and high altitude. The petitioner, who was a short service commissioned officer, was declared dis-entitled for permanent commission in Army. The petitioner opted for extension of service claiming to be eligible for such extension. The petitioner was, however, discharged and released from service on 11.3.1994. The medical board assessed the disability of the petitioner at 70%, as is evident from the release order dated 20.10.1993 (Annexure P-2),

8. The petitioner applied for disability pension. His claim for disability pension has been rejected vide letter dated 11.12.1996 (Annexure P-3).

9. The above orders are subject-matter of challenge in the present petition.

10. The Union of India in its disclaimer to the present writ petition attempted to justify the order of discharge as also refusal to extend the service tenure on the ground that the petitioner sustained injury while driving the Army vehicle in an accident. It is further stated that the accident occurred due to over-speeding and negligent driving for which administrative action was taken against the petitioner for recovery of 15% of the cost of damage caused to the vehicle. It is further stated that the injury sustained by the petitioner was not considered attributable to Military Service. The respondents also referred to the discharge of service as expiry of his contractual period of five years.

11. Disability pension is permissive under Regulation 173 of the Army Pension Regulations read with Appendix - II.

12. These provisions are quoted hereunder:

Rule 173:

Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or over.

The questions whether the disability is attributable or aggravated by military service shall be determined under the Rules in Appendix - II.

Appendix II (Rules 2)

Rule 2: Disablement or death shall be accepted as due to military service provided it is certified that:

a) the disablement is due to a wound, injury or disease which is i) attributable to military service ii) existed before or arose during military service and has been and remains aggravated thereby.

13. Under the aforesaid regulations, disability pension becomes payable to an individual, who is invalided from service on account of disability attributable to or aggravated by military service with 20% or more disability. Appendix -II requires the disability to be certified on account of injury or disease attributable to military service or existed before or arose during military service and remains aggravated thereby.

14. From the bare reading of the aforesaid regulations, it appears that the petitioner''s injury is attributable to military service, his disability being certified at 70% at the time of release, he is entitled to disability pension. The impugned order (Annexure P-3), communication dated 11.12.1996, however, denies such pension to the petitioner on the ground that the injury is not attributable to nor aggravated by military service. This communication do not indicate any basis for such an opinion by the Government of India and seems to be contrary to the findings recorded by the Court of Inquiry and the medical release board.

15. The respondents have also notified the Entitlement Rules for Casualty Pensionary Awards, 1982. These Rules were promulgated by the Ministry of Defence and have been amended from time to time. The Rules have direct bearing on the issue under consideration.

16. The relevant extract of these Rules is noticed hereunder:

1. The Entitlement Rules are set out below apply to service personnel who become non-effective on or after 1st January, 1982. The cases arising on or after 1st January, 1982 may be considered under these rules provided that such a case is still outstanding on the date of issue of these rules. For the purpose of defining whether a case will be treated as outstanding or not, it may be clarified that where such a case has already been decided even at the initial stage, the same will be treated as having been decided. Such cases will not be reopened. These rules shall be read in

conjunction with the Guide to Medical Officers (Military Pension) 1980; as amended.

4. Invaliding from service is a necessary condition for grant of disability pension. An individual who at the time of his release under the Release Regulations, is a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than ''A'' and are discharged because no Alternative or Shelter Appointment can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.

6. Disablement of death shall be accepted as due to military service provided it is certified by appropriate medical authority that:

a) the disablement is due to a wound, injury or disease which (i) is attributable to military service, or (ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/hastening of the onset of a disability.

8. Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.

Onus of Proof

9. The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Duty

12. A person subject to the disciplinary code of the Armed Forces is on "duty":

(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

Injuries

13. In respect of accidents or injuries, the following rules shall be observed:

(a) Injuries sustained when the man is "on duty" as defined, shall be deemed to have resulted from military service, but in cases injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action in cases where attributability is conceded, the question of grant of disability

pension is full or at reduced rate will be considered.

Assessment

22. Assessment of degree of disability is entirely a matter of medical judgment and is the responsibility of the medical authorities. The degree of disablement due to service/duty of a member of the military forces shall be assessed by making a comparison between the conditions of the member as so disabled and the condition of a normal healthy person of same age and sex, without taking into account the earning capacity of the member in his disabled condition in his own or any other specific trade or occupation, and without taking into account the effects of any individual factor or extraneous circumstances.

17. Aforesaid Rules were further followed by instructions issued from the Adjutant General Branch vide letter dated 29.9.2006. The relevant extract from the aforesaid instructions, which relate the non-regular officers released in low medical category, reads as under:

The Personnel Services Directorate had taken up a case with the Min of Def and Govt Orders have been issued on 30 Aug 2006 accepting the proposal to grant service element for full service rendered by SSCOs/ECOs for disabilities accepted as attributable to or aggravated by Military Service for those officers who were released from service on or after the issue of the letter. Service element of disability pension in respect of non-regular commissioned officers who retired before the issue of these orders shall be revised prospectively in accordance with these orders. However, no arrears will be admissible in these cases.

18. These instructions were issued pursuant to Ministry of Defence, Government of India''s communication dated 30.8.2006. The relevant extract reads as under:

No. 1(9)/2006/D(Pen-C)
Government of India Ministry of Defence
Department of Ex-Servicemen Welfare
New Delhi, the 30th August, 2006

To

The Chief of the Army Staff

The Chief of the Naval Staff

The Chief of the Air Staff

Subject: Grant of disability pension in respect of non-regular officers released in low medical category.

Sir,

I am directed to say that the issue relating to counting of full length of service rendered by Emergency Commissioned Officers/Short Service Commissioned Officers in determining service element of disability pension to them has been under consideration of the Government for quite some time. The President is pleased to decide that non-regular officers viz. Emergency Commissioned Officers, Short Service Regular Commissioned Officers and Short Service Commissioned Officers, who are found in lower medical category at the time of release than the one in which they were recruited and whose disability is accepted as attributable to or aggravated by Military service, will be entitled to service element of disability pension after taking into account the full commissioned service rendered by them as in the case of Regular Commissioned Officers. The rate of service element will be the same as admissible to the Regular Commissioned Officers. Since non regular officers have been brought at par with the Permanent Regular Commissioned Officers in the matter of grant of Disability pension, there will be no recruitment of exercising option by non regular commissioned officers as earlier prescribed under Para 1 of this Ministry''s letter No. F 210795/74/Pen-C dated 30.11.1977. The Special Army Instruction No. 6/S of 1965 and this Ministry''s letter No. F210795/74/Pen-C dated 30th November 1977 will stand modified to that exten.
Service element of disability pension in respect of non-regular commissioned officers retired before the date of issue of these orders shall be revised prospectively in accordance with these orders in the case of aggravation, the benefit of service element as per these orders will be applicable only to those who retire on or after the date of issue of this letter. Past cases will not be re-opened.

19. The stand of the respondents in the reply that the accident was caused due to negligence of the petitioner while driving Army vehicle, is not substantiated from any official record, to the contrary the findings recorded by the Court of Inquiry, the final opinion of the Court and the observations of the General Officer Commanding, clearly indicate absence of any negligence on the part of the petitioner. The clear and categorical findings of the Court of Inquiry reveal that the petitioner had a valid driving licence to drive on the hilly areas. He was detailed for an official duty. The accident occurred due to brake failure. The final verdict of the Court specifically mentioned that the injury sustained by the petitioner is attributable to Military service. The damage caused to the vehicle is also to be borne by the State. No material has been placed on record except bald statement in the reply that any disciplinary action was initiated against the petitioner for causing accident or the same was on account of his negligence. Nor the petitioner was found amiss in discharge of his duties in any manner. The petitioner has been discharged pursuant to the opinion of the release medical board finding him unfit for Military service in the field area. The stand of the respondents that the petitioner''s discharge is on account of expiry of his tenure of service, he being a Short Service Commissioned Officer, also is not supported by any decision from the competent authority. It is a matter of regret that such a stand has been taken by the respondents contrary to

their own record and the opinion of the Court of Inquiry, as also of the various medical boards held to examine the injury sustained by the petitioner and his continuance in service by placing him in low medical category, The legal preposition is settled in so far this aspect is concerned.

20. In R.K. Kapoor v. Union of India 2006 (4) SCT 541, the Division Bench of the Hon''ble Delhi High Court held that CDA(P) cannot sit over the opinion of the medical board in respect of disability.

21. The Division Bench of this Court in the case of Amar Nath v. Union of India and Ors. (1998) 118 PLR 841, where the court, after discussing law in detail, held as under:

Once this certificate was issued in favour of the appellant entitling him to receive the disability pension, this benefit could not have been withdrawn by the Controller of Defence Accounts (P), Allahabad on his own without holding appellate medical board in accordance with law. Exhibit D.3 while rejecting the claim of the appellant referred to period of 10 years previous of 25.6.1988 and disability being less that 20%. This was never put to the appellant prior to the passing of the order. If the appellant was entitled to the benefit in accordance with the rules on the strength of the disability certificate Ex. P. 1, the appellant could not be divested of the same without following due process of law and after giving proper opportunity to the appellant which admittedly has not been done in the present case. The corollary to this main issue is as to whether the Controller of Defence Accounts (P), Allahabad at all was justified in assuming the jurisdiction which is not vested in it under the rules. Under the relevant rules and instructions, the respondents have the authority to constitute an Appellate Board and disturb the findings arrived at by the first medical board which again was not done, it would not be permissible to disturb the finding without taking recourse to the relevant rules and instructions governing the subject.
22. In another Division Bench judgment of the Hon''ble Delhi High Court reported as 2006 (4) SCT 545, following observations have been made:

8. Similarly, in cases where a court of enquiry has been held with regard to any injury of a person and it has been held by the Commanding Officer that the injury sustained by the petitioner was attributable to military service and the person was placed in low medical category, orders passed by the Chief Controller of Defence Accounts (Pension) summarily rejecting the disability claim without following the procedure, as mentioned in Shri Bhagwan''s case (supra), suffers from infirmity and the same are hereby quashed.

23. The stand of the respondents that the petitioner was discharged on account of expiry of his tenure and is, thus, not entitled to disability pension, is also to be rejected in view of the Rule 4 of the Entitlement Rules and Regulation 53 of the Army Regulations. Regulation 53 of the Army Regulations provides as under:

53. Officers compulsorily retired on account of age or on completion of tenure. An officer compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority may at the discretion of the President, be granted in addition to the retiring pension admissible, a disability element as if he/she had been retired on account of disability, according to accepted degree of disablement at the time of retirement.

24. The aforesaid regulation clearly provides that where an officer is retired on completion of tenure and he is suffering from any disability attributable to or aggravated by military service and recorded by service medical authority may also be granted disability element of pension at the discretion of the President. In the present case, the petitioner was not discharged on completion of his tenure. The entire material placed on record is pointer to the fact that the petitioner''s release was not on account of expiry of his tenure, but on account of disability by placing him in low medical category finding him unfit for Military service in field area. It is under these circumstances that the petitioner has also claimed extension in service on sedentary/light duty being one of his prayers. In terms of regulation 53, a person who is retired compulsorily or released on completion of tenure but suffers from disability attributable to or aggravated by military service, is also entitled to disability element of pension at the discretion of the President of India. Thus, rejecting the claim of the petitioner on such a flimsy ground is totally unwarranted in law and on facts. Rule 4 of the Entitlement Rules, referred to above, clearly provides that invalidating from service is a necessary condition for grant of disability pension. The petitioner has been invalided out of service on account of disability by placing him in low medical category. His disability having been assessed at 70% by the release medical board, his claim for disability pension cannot be disputed.

25. The Entitlement Rules for Casualty Pensionary Awards, 1982, referred to hereinabove, deal in detail with the circumstances under which the disability is to be granted. While Rule 4 deals with the invalidating from service as a necessary condition for grant of disability pension, Rule 6 deals with the disablement due to wound injury attributable to military service. Rule 8 of the aforesaid Rules clearly provides that even if there is a casual connection between the disablement and military service as certified by the medical board, disability pension is payable. Rule 9 places onus of proof upon the authorities to establish that the disability is not attributable to military service.

26. From the conjoint reading of the above quoted Rules and Regulations, it is abundantly clear that the claimant is not to be called upon to prove the conditions of the entitlement rather the benefit has to be given liberally and in case of doubt the benefit should go to the claimant.

27. In the present case, there is no question of even a doubt rather the clear findings of the Court of Inquiry establish that the injury sustained by the petitioner

is attributable to military service, Even the duty defined under Rule 12 of the aforesaid 1982 Awards is also attracted in the present case. The petitioner was on official duty when he sustained injury. In view of the above circumstances, the petitioner is entitled to disability pension. The petitioner has also claimed extension in service, however, during the course of arguments, the claim for extension in service was abandoned on account of pendency of this petition for number of years.

28. This petition is accordingly allowed. Respondents are directed to grant disability pension to the petitioner and release the benefit within a period three months. However, the arrears shall be restricted to three years preceding the filing of the writ petition.