

**(2008) 07 P&H CK 0130**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 7949 of 2007

Kuldeep Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** July 21, 2008

**Acts Referred:**

- Entitlement Rules for Casualty Pensionary Awards, 1982 - Rule 14, 15, 4, 5

**Citation:** (2009) 1 ILR (P&H) 261

**Hon'ble Judges:** Mehtab S. Gill, J; Jaswant Singh, J

**Bench:** Division Bench

**Advocate:** Ashok Bhardwaj, for the Appellant; S.K. Sharma, Central Government Standing Counsel, for the Respondent

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**Judgement**

Jaswant Singh, J.

The Petitioner has sought quashing of order dated 26th July, 1998 (Annexure P-1) and order dated 29th August, 2001 (Annexure P-2),--vide which his claim for disability pension consisting of service element and disability element has been declined and appeal dismissed by the first Appellate Committee, respectively. It is further prayed that a direction be issued to grant disability pension to the Petitioner from the date of his discharge i.e. 1st April, 1997 alongwith interest @18% for delayed payment.

2. The Petitioner was enrolled in the Indian Army (Sikh Light Infantry) as a Solider (Recruit) on 27th August, 1996. At the time of recruitment he was found to be medically fit. However, while undergoing the basic military training at the Sikh Light Infantry Regimental Centre, Fatehgarh, he was admitted to Military Hospital, Fatehgarh and was diagnosed as suffering from "Hypertension". The medical authorities considered him unfit for further retention in service and consequently he was discharged from service after being placed in the medical category "EEE" with effect from 1st April, 1997 with the disability shown due to Hypertension (401). The

claim of the Petitioner for grant of disability pension was rejected by the Respondents and conveyed,-- vide letter dated 26th July, 1998 (Annexure P-1) and his appeal against the same was rejected,--vide order dated 29th August, 2001 (Annexure P-2). Hence this writ petition.

3. It is stated by the Petitioner that he is entitled to disability pension under Regulation 173 of Pension Regulations for the Army, 1961 (hereinafter referred to as the Pension Regulations) which lays down primary condition for grant of disability pension. The Petitioner, who is a recruit is entitled to be considered as per Regulation 173 in view of Regulation 181 of the Pension Regulations, which provide that the recruits shall be eligible for disability pension at the rates and under conditions applicable to a Sepoy of the lowest group. It is further stated that the Petitioner at the time of entry into Army service was declared medically fit whereas he was invalidated out of service by way of discharge on account of his low medical category on account of suffering from Hypertension (401), which as per Annexure III to Appendix II--Entitlement Rules for Casualty Pensionary Award, 1982--and is affected by environmental factors and thus his disease/disability is presumed to be attributable or aggravated due to military service.

4. Respondents upon notice have stated that the Petitioner is not entitled to the grant of disability pension on account of delay and laches as he has filed the present petition after six years. It is further stated that the medical authorities had viewed the disease of the Petitioner as not attributable or aggravated by military service and his disability was assessed as 0% age and further that the disability of the Petitioner was a constitutional disorder and thus, he was not entitled to the grant of disability pension.

5. We have heard learned Counsel for the parties and perused the paper book.

6. Before embarking upon any discussion, it is necessary to reproduce the extracts of relevant Pension Regulations i.e. 173, 181 186(1), Rules 4,5,14 and 15 and relevant extracts of Annexure III to Appendix II--Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to Entitlement Rules, 1982). The same are reproduced as under:

Primary conditions for the grant of disability Pension.

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

Recruits and young soldiers and Boys.

181. Recruits and young soldiers and Boys, shall be eligible for disability pension at the rates and under the conditions applicable to a sepoy of the lowest group.

Pensionary awards when the degree of disablement is reassessed at less than 20 per cent.

186(I)An individual who is invalidated out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

APPENDIX II (Referred to in Regulation 48, 173 and 185) ENTITLEMENT RULES FOR CASUALTY PENSIONARY AWARDS, 1982.

1. XXX

2. XXX

3. XXX

4. Invalidating 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 in 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.

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

PRIOR TO AND DURING SERVICE:

(a) member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which has taken place is due to service.

6 to 13. XXXXXXXXXXXXX

DISEASES:

14. In respect of diseases, the following rule will be observed:

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.

15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dictic compulsions, exposure to noise, physical and mental stress and strain. Disease due to infection arising in service, will merit an entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such conditions which, if approved, could rule out entitlement of attributability but would require consideration regarding aggravation. For clinical description of common diseases reference shall be made to the Guide to Medical Officer (Military Pensions) 1980, as amended from time to time. The classification of diseases affected by encironmental factors in service is given in Annexure-III to these rules.

#### ANNEXUREIII TO APPENDIX II

##### Classification of Diseases A. Diseases Affected by Climatic Conditions:

1. to I4 XXXX XXXX XXXX XXXX

##### B. Diseases Affected by Stress and Strain:

1. XXXXX XXXX XXXX

2. Hypertension (BP)

3. to 14 XXXX XXXX C. TO H.

##### J. Diseases not Normally Affected by Service:

1. Malignant diseases (Cancer and Carcinoma) 2. Sarcoma (except in cases of Sarcoma of bone with a history of injury due to service, on the site of development of the growth).

3. Epithelioma.

4. Rodent ulcer.

5. Lymphosarcoma.

6. Lymphadenoma except of viral aeticlogy.

7. Leukaemia (except radiation effect).
8. Pernicious anaemia (Addison's disease).
9. Osteitis deformans (Paget's disease).
10. Gout.
11. Acromegaly.
12. Cirrhosis of the liver-if alcoholic. Eyes.
13. Errors of refraction.
14. Hypermetropia.
15. Myopia.
16. Astigmatism.
17. Presbyopia.
18. Glaucoma-acute or chronic, unless there is a history of injury due to service or of disease of the eye one to service.

Note:--There is no such disease of Constitutional Nature as is being mentioned by AMC Office in the Medical Board proceedings in this list. If that be that case, an individual cannot be recruited in Service.

7. It is an admitted case that the Petitioner at the time of his entry into military service on 27th August, 1996 was assessed as medically fit. It is not disputed that he suffered medical complication during the training at the Sikh Light Infantry Regimental Centre, Fatehgarh, and was invalidated out from service on 1st April, 1997 for having been diagnosed as suffering from Hypertension (401) and placed in the medical category "EEE".

8. Thus, the Petitioner fulfils the first necessary condition for grant of disability pension i.e. Invalidation from service keeping in view Rule 4 of the Entitlement Rules, 1982. Further, a perusal of provisions of Rule 5 of 1982 Rules makes it clear that deterioration in the medical category of the Petitioner is due to military service. It is further clear from a reading of Rules 14 and 15 read with Annexure III of the Entitlement Rules, 1982 (reproduced hereinabove) that disease of Hypertension suffered by the Petitioner during his training period at the Regimental Centre is covered under the provisions, showing the same is affected by stress and strain i.e. Environmental factors in service. It is thus established that the conditions of military training attributed to onset of the disease of Petitioner, i.e. Hypertension on the basis of which he was discharged from service. Therefore, the two conditions prescribed under Regulation 173 for grant of disability pension are fulfilled. The third condition provided for grant of disability pension under Rule 173 that the disability must be 20% or over is further qualified by Regulation 186(1) which

provides that if the disability attributable to or aggravated by service but assessed is below 20% then the individual, who is invalidated out of service shall be entitled to service element of the disability pension only. Further, the Petitioner being a recruit in view of Regulation 181 is eligible for disability pension at the rates and under the conditions applicable to a Sepoy of the lowest group. Therefore, the Petitioner fulfils the conditions of grant of disability pension with service element only.

9. The stand of the Respondents that the Petitioner suffered from a disease of constitutional nature is not supported by any of the provisions of Pension Regulations applied to the facts of the case. A reading of Clause J of Annexure III to Entitlement Rules, 1982 indicates that the rules making authority has laid down the diseases which can be said to be of constitutional nature. Hypertension is not in the said list. Nothing has been shown to indicate that disease of Hypertension is of constitutional nature.

10. Therefore, we are of the view that the action of the Respondents in declining the disability pension to the Petitioner is against Pension Regulations and thus illegal.

11. With regard to the contention of the Respondents of six years delay on the part of the Petitioner in filing the present writ petition challenging the impugned order dated 26th July, 1998 (Annexure P-1) and 29th August, 2001 (Annexure P-2), we are of the view that the same deserves to be outrightly rejected.

12. It is well settled that in the matter of grant of disability pension to the Ex-Army personnel, the Courts have condoned inordinate delays on the rationale that the authorities could not take benefit of their own wrong as they had denied the rightful and legal claim of disabled Army personnel by misinterpreting or not following the Regulations/Rules. A Division Bench of this Court in the case of Sardara Singh v. Union of India, 1992 (6) SLR 683 allowed the claim of disability pension by ignoring the delay of 40 years. The Hon'ble Supreme Court in the case of [S.R. Bhanrale Vs. Union of India and others](#), and S.K. Mastan Bee v. General Manager, South Central Railway and Anr. (2003) 1 SCC 183 have rejected the plea of inordinate delay raised by the Army authorities with regard to claims of disability pension/family pension of the Army personnel and their dependants.

13. In view of the above, impugned orders dated 26th July, 1998 (Annexure P-1) and 29th August, 2001 (Annexure P-2) are set aside and the writ petition is allowed in the following terms:

1. The Petitioner is entitled to be paid service element of pension as per prescribed rates from the date of his invalidation from service.

2. The arrears of disability pension with service element only, so calculated and determined, shall be restricted to three years and two months prior to the date of filing of present writ petition and the same shall be disbursed to him within three months from the date of receipt of a certified copy of this judgment by the

competent authority.

3. In case the arrears are not disbursed within the said period of three months the entire arrears will carry interest @2% per annum from the date of expiry of three months till the date of actual payment.

14. There shall, however, be no order as to costs.