

(2005) 04 AHC CK 0237

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 4892 (S/S) of 2001

Ex. Sepoy Digvijay Singh
2793142A

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: April 12, 2005

Acts Referred:

- Army Rules, 1954 - Rule 13(3)
- Pension Regulations for Army, 1961 - Regulation 173, 53

Citation: (2005) 6 AWC 5702 : (2005) 3 ESC 1991

Hon'ble Judges: A.N. Varma, J

Bench: Single Bench

Advocate: K.C. Tandon, K.N. Mishra and R. Chaubey, for the Appellant; Pratima Devi and K.D. Nag Advs., for the Respondent

Final Decision: Dismissed

Judgement

A.N. Varma, J.

Through the instant writ petition, the petitioner has assailed the orders dated 15.6.1999 as well dated 9.1.2001, as contained in Annexures 4-A and 8 to the writ petition, whereby his claim for disability pension has been negated by the opposite party No. 4 and appeal preferred against the same has also been dismissed vide Annexure 8.

2. The petitioner was enrolled as a Sepoy in Maratha Light Infantry Regiment on 26.2.1996 for 15 years plus 2 years as initial engagement. His training commenced on 8.4.1996 and after successful completion of which he was medically examined and was declared in the category "AYE".

3. On 28.8.1997 he was admitted in Military Hospital, Faizabad, for psychiatric examination and follow up. Thereafter, he was transferred to Military Hospital, Jabalpur, where he remained admitted nearly for a month. On 19.12.1997 the Senior

Advisor in the department of Psychiatry is said to have told the petitioner go to home and sleep. He categorised the petitioner in medical category "EEE", i.e. "unfit for military service".

4. On 13.4.1998 the petitioner is said to have submitted an application to the Commandant, Military Hospital, Jabalpur, stating therein that he was not suffering from any mental ailment and that he may be examined by a Senior Authority. The petitioner was again referred to Military Hospital (CC), Lucknow. The Consultant in Psychiatry did not revise the finding given by the Doctor at Jabalpur and he was sent back to Military Hospital, Jabalpur. On 29.6.1998 the petitioner was discharged from service under Army Rule 13 (3) (III) (iii) as invalid out of service.

5. Having been so discharged from Military service, the petitioner made an application before the opposite parties for grant of disability pension. The said application was rejected by the opposite party No. 4 on 29.6.1999 vide Annexure 4-A on the ground that the disability from which the petitioner suffered was not attributable to Military services and therefore, under the Rules the same was not admissible to him.

6. Being aggrieved, the petitioner filed an appeal. The appellate authority upon consideration of the material on record and after careful consideration rejected his appeal. The letter of communication with regard to rejection of his appeal has been filed as Annexure 8.

7. I have heard the learned Counsel for the petitioner, Sri K.N. Mishra as well as Sri K.D. Nag, learned Counsel appearing on behalf of opposite parties.

8. The submission of the learned Counsel for the petitioner is that at the time when the petitioner was enrolled in Military service, he was thoroughly examined and was categorised in medical category "AYE". The onset of ailment was in August 1997 and was aggravated due to stress and strain in Military service, therefore, according to him it has to be presumed that the ailment was on account of, by the stress and strain undergone by him during Military service.

9. In this connection he placed reliance upon Regulation 173 of the Pension Regulations for the Army. According to him an Army personnel is entitled to disability pension if he/she is invalided from the service on account of a disability which is attributable to, or aggravated by Military service. As per his submission since the ailment from which he was suffering was aggravated on account of stress and strain in Military service, therefore, he was entitled for disability pension and the opposite parties in rejecting the same has committed a manifest illegality. Regulation 173 of the Regulations reads as follows :

"173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to, or aggravated by Military service and is assessed at 20 per cent or

over."

10. The question whether a disability is attributable to or aggravated by Military service shall be determined under the rules in Appendix II.

11. In support of his case the petitioner placed reliance upon a decision rendered by this Court in [Mahavir Singh Rawat Vs. Union of India and others](#) . In the said case the petitioner has suffered from Nurosis and was discharged from Army service on account of said disability. In para 10 this Court observed as follows :

"It is well settled proposition of law that award of pension is not a bounty from the employer or an act of charity. It is the indefeasible right of the employee who has earned the privilege by reason of his having been disabled while in service. In my view, the claim of the petitioner for disability pension has been rejected in an arbitrary and capricious manner. According to the rules, the petitioner is entitled to disability pension."

12. In the aforesaid case the individual was posted in an area at high altitude in District Udhampur continuously for a period of three years and in view of the fact that the disease was due to stress and strain suffered by him during his posting in the said area, therefore, the disability was found to be attributable to the Military service.

13. In another case of Jagdamba Prasad Dubey v. Union of India and Ors. 1999 (2) LBESR 551 (All), this Court opined that where a person develops disease by the stress and strain which is attributable to Military service, he is entitled for disability pension. In the said case also the concerned person suffered from Nurosis due to stress and strain on account of having been posted at Patni Top, District Udhampur. Therefore, the said employee was entitled for disability pension.

14. Sri K.D. Nag, in opposition submitted that the claim of the petitioner for disability pension has been rightly rejected as the disability from which the petitioner suffered was not attributable to Military service, but was on account of his own problems pertaining to family and domestic affairs.

15. In the counter-affidavit it has not been disputed that the petitioner was medically fit when inducted in the Army. However, in para 11 it has been averred that the disability on account of which the petitioner was invalided out of service is constitutional disorder and is neither attributable to nor aggravated by Military service. It has further been stated in para 12 that since the disability of the petitioner has been regarded as constitutional disorder and neither attributable to nor aggravated by the duties of the Military service by the medical authorities "Personality Disorder", therefore, he is not entitled for disability pension under the Rules.

16. Sri Nag submitted that Medical Board gave an opinion that the disability from which the petitioner suffered was not attributable to, or aggravated by Military

service. This opinion having not been assailed, becomes final, the petitioner was not entitled for disability pension. In this connection he placed reliance upon [Union of India \(UOI\) and Others Vs. Dhir Singh China, Colonel \(Retd.\)](#), wherein in para 7, the Hon"ble Supreme Court held as follows :

"That leaves for consideration Regulation 53. The said Regulation provides that on an officer being 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, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by Military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by Military service. Clearly, therefore, the opinion of the Medical Board rules out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by Military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

17. In para 5 of the writ petition, the petitioner has categorically stated that in March 1997 the petitioner had gone on one month's leave. After returning he fell ill and reported sick on 27.7.1997 and complained of excessive thought of home and family. In para 7 it has further been stated that on 18.7.1997 he reported at Faizabad and thereafter he proceeded on annual leave on 26.7.1997. He remained perfectly normal at home. Again in para 7 it has been averred that the petitioner reported back on duty on 20.8.1997 after availing the annual leave. The petitioner all of a sudden started feeling very sleepy after joining duty. Thus as would appear that whenever the petitioner went on annual leave, he was perfectly normal, but whenever he joined the duties the ailment started. The disease certainly cannot be said to be attributable to Military service. It is the thought of home and family that in fact disturbed the petitioner on account of which he felt depressed. Home sickness in no circumstances can be said to be attributable to Military service. A person who has opted to serve the nation and joined Army has to remain away from his family and children, while discharging the pious duty of guarding the frontiers. If any Army personnel remains engrossed in his personal and family affairs and develops some mental problem, the same cannot be said to have been aggravated by or attributable to Military service. Moreover, the petitioner never was posted at high altitude or positions of dangerous terrains. From the very start of his Military career, he was posted at planes and in congenial surroundings. Disturbance only started, as

would appear, when the petitioner was away from home and his family. Further, the opinion expressed by the Medical Board on the question of disability, cannot be interfered with. It is a view expressed by an expert body. The depression, if any, cannot be said to be attributable to or aggravated by Military service. A person working in the Army has to discharge his functions, with utmost ability and calm composure.

18. The cases relied upon by the petitioner and referred to hereinabove have no application insofar as the case at hand is concerned. The disability from which the petitioner suffered was not aggravated by, or attributable to the Military service.

19. As would also appear from the perusal of the Regulation 173 an individual who is discharged or invalided from service on account of a disability is entitled for disability pension, if such disability is attributable to, or aggravated by Military service.

20. In the above backdrop, the claim of the petitioner for disability pension has rightly been rejected, as the said disability was not attributable to, or aggravated by Military service.

21. The writ petition thus being devoid of merit, is hereby dismissed.