Union of India (UOI) and Others Vs Surinder Singh Rathore

Court: Supreme Court of India

Date of Decision: March 13, 2008

Acts Referred: Army Rules, 1954 â€" Rule 13
Medical Services of the Armed Forces Regulations, 1983 â€" Regulation 2, 423, 53

Citation: (2008) 4 JT 435 : (2008) 4 SCALE 468 : (2008) 5 SCC 747 : (2008) 2 SCC(L&S) 185 : (2008) 3 SLJ 438

Hon'ble Judges: J. M. Panchal, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: G.E. Vahanvati, S.G., Indra Sawhney and Anil Katiyar, for the Appellant; Karan Singh Bhati, Aishwarya Bhati, Prabodh Kumar and Abhishek Gautam, for the Respondent

Final Decision: Disposed Of

Judgement

Arijit Pasayat, J.
Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Rajasthan High Court, Jodhpur Bench, dismissing the Civil Special Appeal

(writ) filed by the appellants.

3. Background facts in a nutshell are as follows: Respondent was employed as a Signal Man in the army on 5.1.1985. Sometime in October,

1991, he was admitted to the Military Hospital, Jodhpur for treatment of a disease called "Maculopathy (RT) Eye". Subsequently he was referred

to the Command Hospital in Pune for treatment and was later reverted back to the unit for normal duties with employability restrictions. The

respondent continued to complain of diminished vision and was re-admitted to the Military Hospital, Jodhpur. Since he was not responding to the

treatment, he was referred to the Release Medical Board.

On 1.5.1993, said Board completed the said investigation and recommended that the respondent be released from service in medical category and

CEE (permanent) which is lower than the category ""AYE"" due to the aforesaid disease. The disability of the respondent was assessed as 30% for

two years and considered as neither attributable to nor aggravated by military service. The Board"s proceedings were also approved by the

competent authority on 17th May, 1993. The respondent was discharged from service with effect from 31.7.1993 in terms of Rule 13 of Army

Rules, 1954 (in short the "Rules"). Thereafter he was granted a sum of Rs. 9,350/- and Rs. 7,425/-on account of invalid gratuity and death cum

retirement gratuity respectively. But prayer of the respondent for grant of disability pension was rejected on the ground that the disease from which

the respondent suffered was neither attributable to nor aggravated by the military service. This information was based on the information of the

Release Medical Board as per the provisions of Rule 173 of the Pension Regulations for the Army (in short "Pension Regulations") read with Rule

2 of Appendix II and Regulation 423 of Medical Service of Armed Force Regulation 1983.

An appeal was preferred by the respondent which was forwarded to the Ministry of Defence. The appeal was rejected upholding the view of

CCDA (Pension) as communicated to the respondent. Thereafter a writ petition was filed before the High Court which was numbered as Writ

Petition No. 2597 of 1996. By order dated 16th February, 2005, the said Writ Petition was decided directing the present appellants to grant the

respondent disability pension on the ground that the controversy was squarely covered by an earlier decision rendered by the High Court in SB

Civil Writ No. 1083 of 2001. Order of learned Single Judge was challenged by filing a Civil Special appeal. By order dated 2.1.2006, the appeal

was rejected. The present appeal by special leave has been filed by the appellants.

4. Learned Counsel for the appellants submitted that the factual scenario has not been appreciated by the learned Single Judge and the Division

Bench in the proper perspective. The report of the Medical Board clearly indicates that the disability was not attributable to military service and

also it was not aggravated by service.

Learned Counsel for the respondent on the other hand supported the orders of the High Court.

5. Reference was also made to Pension Regulations. Rule 173 of such Regulations reads as follows:

Primary conditions for the grant of disability pension:

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 percent or above.

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

Relevant portion in Appendix II reads as follows:

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

(a) The disablement is due to 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;

(b) the death was due to or hastened by-

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note: The Rule also covers cases of death after discharge/invaliding from service.

3. There must be a casual connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable

doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case.

7. Regulation 423 has also relevance and needs to be extracted. The same reads as follows:

423. Attributability to Service:

(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause

giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is,

however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and

circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as

reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry

the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a

shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with

the sentence ""of course it is possible but not in the least probable"" the case is proved beyond reasonable doubt. If on the other hand, the evidence

be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit

of doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained

during the actual performance of ""duty"" in armed forces. In case of injuries which were self inflicted or duty to an individual''s own serious

negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose

during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in

which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the

disease, will be regarded as aggravated by the service. 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 service in the armed forces. 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.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a

medical board or by the medical officer who signs the death certificate. The medical board/medical officer will specify reasons for their/his opinion.

The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which

it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however,

be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:

(i) AFMS F-81 in all cases other than those due to injuries.

(i) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate

of a single medical officer will not be accepted except in case of stations where it s not possible or feasible to assemble a regular medical board for

such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the

ADMS (Army)/DMS (Navy)/DMS (Air).

8. In 300631 this Court had analysed Rule 173 of the Pension Regulations. It was observed that where the Medical Board found that there was

absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court''s direction to the

Government to pay disability pension was not correct. It was inter-alia observed as follows:

6...It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the

military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to wound, injury or

disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the

military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made ample clear from Clause

(a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder required to be observed. Clause (c) provides

that 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. Unless these conditions satisfied, it

cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of Doctors, it is not

due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on

account of military service. In each case, when a disability pension is sought for made a claim, it must be affirmatively established, as a fact, as to

whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service.

9. The position was again re-iterated in 279994 . In para 7 it was observed as follows:

7. 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 ruled 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.

The above position was again highlighted in 293235

10. The Medical Board''s opinion was clearly to the effect that the ailment suffered by the appellant was not attributable to the military service and

also not aggravated due to it. Learned Single Judge and the Division Bench were not justified in holding that the same was attributable to Military

service and/or was aggravated because of service. The respondent is not entitled to disability pension. However, on the facts and in the

circumstances of the case payment, if any, already made to the respondent by way of disability pension, shall not be recovered.

11. The appeal is allowed without any order as to costs.