

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1179/2001

Date of decision: 19.02.2009

Joginder Singh

Vs.

Union of India & Ors.

Coram:

MR. JUSTICE J. P. SINGH, JUDGE

Appearing Counsel:

For the Petitioner : Mrs. Surinder Kour, Advocate.

For the Respondents : Mr. P.S.Chandel, CGSC.

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|---|---|------------|
| i) Whether approved for reporting
in Press/Journal/Media | : | Yes |
| ii) Whether to be reported
in Digest/Journal | : | Yes |

1. Petitioner has filed this writ petition seeking quashing of Chief Controller of Defence Accounts Memo No. G-3/53/468/5/99 dated 23.08.1999 as also the appellate order issued by Ministry of Defence vide its Communication No. 7(1234)/2000/D (Pen.ANAC) dated 05.02.2001 declining grant of disability pension to the petitioner who had been boarded out from Army Service on April 09, 1998 after having served for more than fifteen years, besides seeking issuance of a writ of mandamus to the respondents to consider his case for payment of Disability pension along with the arrears and interest at the rate of 18% per annum.

2. The undisputed facts arising out of the case may be stated thus:-

- 1) Petitioner was enrolled in Artillery 193 Field Regiment on January 06, 1983. He was invalided out from service w.e.f. April 10, 1998 under Rule 13 (3) item III (iii) of the Army Rules, 1954 due to the invaliding disease ~~to~~ **AFFECTIVE PSYCHOSIS (MANIA)** ICD-296 ~~め~~
- 2) The invaliding Medical Board held at 167 Military Hospital had, on February 20, 1998, viewed petitioner ~~to~~ invaliding disability, which was less than 20% for two years, as neither attributable to nor aggravated by military service.
- 3) At the time of petitioner ~~to~~ initial entry into Army Service he was not found suffering from any such disease for which he would be invalided out.
- 4) The Medical Board has not given any reason(s) that the disease on the basis whereof the petitioner had been boarded out of service was such which could not have been noticed at the time of petitioner ~~to~~ entry into Army service.
- 5) During the course of his service, petitioner had been promoted as L/Naik.
- 6) The Army Authorities had noticed signs of **AFFECTIVE PSYCHOSIS (MANIA)** for the first time in the petitioner on December 17, 1995.

3. Petitioner's case is that he had suffered from PSYCHOSIS due to stress and strain of the service which was attributable to and aggravated by the military service and was as such entitled to the grant of Disability pension.

4. Respondent's case, on the other hand, is that the petitioner suffered from a disease which was constitutional in nature and in view of the opinion of the Medical Board, the petitioner was not entitled to the Disability pension.

5. I have considered the submissions of learned counsel for the parties and gone through the case law cited at the Bar, reference whereunto shall be made while discussing the issue in question.

6. The sole question which falls for consideration in this writ petition is as to whether the petitioner was suffering from a constitutional disease at the time of his entering into Army Service disentitling him to disability pension or had suffered AFFECTIVE PSYCHOSIS which was attributed to and aggravated by the military service?

7. Perusal of the Regulations governing grant of Disability pension reveals that ~~to~~ unless otherwise specifically provided, a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle causality cases and is assessed at 20% or more.

8. The question whether disability is attributable to or aggravated by military service, is required to be considered in the light of the rules appearing in Appendix II of the Army Regulations governing Grant of Pensions and Retiral benefits in terms whereof :-

1) Entitlement to disability or family pensionary awards in respect of all ranks of the armed forces eligible for pension under military rules, disablement or death shall be accepted as due to service, if-

a) The disablement is due to a wound, injury or disease, which-

- i) is attributable to service; or
- ii) existed before or arose during service and has been, or remains aggravated thereby.
- b) The death was due to or hastened by-
 - i) a wound or injury or disease which was attributable to service or
 - ii) the aggravation by service of a wound, injury or disease which existed before or arose during service.

2) In dealing with the cases the benefit of reasonable doubt, in terms of the regulations is required to be given to the claimant.

Entitlement shall be denied only if it was established **beyond reasonable doubt** that the conditions mentioned above were not fulfilled.

3) **Where an injury or disease which led to discharge or death during service, was not noted in a medical report or other appropriate enrollment papers prepared**

of commencement of the individual's service,
fulfillment of the conditions mentioned in Para 1 above
may be accepted unless there is a positive evidence to the
contrary (Emphasis supplied).

Reference needs to be made to Annexure III to Appendix II too which classifies the diseases *inter alia* affected by stress and strain.

Psychosis and Psychoneurosis, is listed at serial no.1 of the fourteen diseases which are affected by stress and strain.

This Annexure refers to those diseases too which are not normally affected by service.

Before proceeding further, regard needs to be had to the provisions of Rule 14 (b), of the Entitlement Rules, which deals with the presumption which may be relevant to deal with the issue in question. This reads thus:-

4 (b). A disease which had 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 of 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.

9. The disease from which the petitioner had been found to be suffering from, by the Medical Board does not fall in the list of diseases which are not normally affected by service. His case, on the other hand, falls in the list of those diseases which are affected by stress and strain.

10. The Medical Board records produced by the Union Counsel indicate that the petitioner had neither been found suffering from any disability before joining the Army Service nor was he habitual to alcohol/intoxicants.

have been stated by the Medical Board in support of their reasons holding the disease constitutional and having no casual connection with military service.

The material placed on records indicates that for twelve (12) long years of petitioner's service in the army he had not been found suffering from any such disease and had rather been found fit for promotion as well.

12. The facts and circumstances of the case thus indicate that the petitioner was not suffering from any such disease at the time of his accepting the Army service, and, nor was the disease on the basis whereof he had been invalidated out was of such a nature which could not have been noticed when the petitioner had joined the service. The Medical Board has not spelt out reasons in support of its opinion that the petitioner was suffering from a constitutional disease. The disease which the petitioner has been found suffering from and, which had led to his discharge from service, figures in the list of those diseases which are affected by stress and strain.

13. In view of the provisions of the Pension Regulations, the entitlement rules referred elsewhere in this judgment and the factual position noticed in the preceding paragraph, denial of disability pension to the petitioner by the respondents cannot thus be justified.

14. I am fortified in taking the above view in view of the two Division Bench Judgments of this Court, one reported as *Union of India and others versus Surjit Kumar*, 2007 (2) SLJ, 856 and the other delivered in LPA (SW) No. 141/2005 on 11.10.2008.

Judgment cited by the Union Counsel, reported as *Union of India and others versus Surinder Singh Rathore*, may not be applicable

se because the affect of presumption appearing in the Entitlement Rules in case of a person who had not been found suffering from any disease at the time of his accepting the Army Service, and absence of finding by the Medical Board that the disease suffered by the petitioner was of such nature which could not have been detected at the time of his initial medical examination, had not fallen for consideration before the Hon^{ble} Supreme Court of India.

15. For all what has been said above and in view of the law laid-down by the Division Bench of this Court, the petitioner is held entitled to the disability pension.

16. This petition is, accordingly, allowed quashing Chief Controller of Defence Accounts Memo No. G-3/53/468/5/99 dated 23.08.1999 as also the appellate order issued by Ministry of Defence vide its Communication No. 7(1234)/2000/D (Pen.ANAC) dated 05.02.2001.

A direction shall accordingly issue to the respondents to consider grant of Disability Pension and other consequential benefits to the petitioner under rules within a period of six weeks, in the light of what has been held in this judgment.

(J. P. Singh)
Judge

Jammu
19.02.2009
Anil Raina, Secy