

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

LPASW no.473/2002.

Date of decision: 11.02.2011

Union of India and another v. Sikander Singh

Coram:

**Hon'ble Mr. Justice Virender Singh-Judge
Hon'ble Mr. Justice Sunil Hali- Judge.**

Appearing counsel:

**For the appellant(s) :Mr. Tashi Rabstan,CGSC.
For the respondent(s) :Mr. S.R.Sharma, Advocate**

- i/ Whether to be reported in : Yes/No.
Press, Journal/Media.
ii/ Whether to be reported in : Yes/No.
Digest/Journal.
-

Per Sunil Hali-J.

The petitioner-respondent was enrolled in the Indian Army on 28.02.1991. During the course of his service in the army, he mishandled his loaded weapon of which he was found to be negligent, as a result of which, he suffered 14 days rigorous imprisonment. Accidental shot fractured his right foot, as a consequence of which, he was down-graded to low medical category CEE (T) from 16th December, 1997. The petitioner-respondent was brought before the Release Medical Board on 21st October, 2000. The Board after examining

the petitioner-respondent found that he was suffering from the following disabilities:-

- (i) GSW(Rt.) foot communicated-1 to 5% (Composite Fracture 2nd Metatarsal (For life): Assessment E 922 V 67;
- (ii) Essential Hypertension 401 V467 : 30% (All disabilities for two years 30%.

After his discharge, the claim of the petitioner-respondent for grant of disability pension was forwarded to the Chief Controller of Defence Accounts (Pension) Allahabad, who rejected the same vide his communication dated 26.07.2001. This order was subject matter of challenge in SWP No.2952/2001. The writ court after hearing the parties found that the petitioner-respondent suffered from essential hypertension, which was assessed at 30%. He was discharged in the exercise of power conferred under Army Rule 13(3) Item III (v). The writ Court found that the hypertension was a disease, which could occur on account of hazards of military service. Reliance has been placed on various judgments of this Court indicating that it is the environment to which a person is subjected to, the diseases like mental stress, depression and high blood pressure occur.

The stand of the appellant was that the disease was constitutional in nature and not attributable to military service. This submission did not find favour with the writ Court, which directed that the disability pension be released in favour of the petitioner-respondent as the malady of essential hypertension has occurred on account of hazards of military service and would be attributable or aggravated to by the army service. It is this order of the writ Court which is subject matter challenge before us through the medium of the present appeal.

The controversy in this appeal is within a very narrow compass. It is not disputed that the petitioner-respondent was suffering from essential hypertension and his disability was assessed 30% by the Release Medical Board. He would become entitle for grant of disability pension in terms of Regulation 173 of the Army Pension Regulations if the disability is above 20%. The only impediment in grant of disability pension would be that the disease of which a person is afflicted is not attributable to military service. This could only be detected at the time a person is initially recruited in the army. In case said disease could not be detected at that stage, the Release Medical Board was required to append a certificate indicating that this disease could not have been detected at the stage of recruitment. No such certificate has been

appended or produced before the court to indicate that the said disease could not have been detected at the time when the petitioner-respondent was enrolled in the Indian army.

Having failed to do so, the appellant cannot escape from its liability to pay disability pension to the petitioner-respondent. The order passed by the Chief Controller of Defence Accounts (Pension), Allahabad rejecting the claim of the petitioner-respondent, in the face of the report submitted by the Release Medical Board, was uncalled for. Learned Single Judge has rightly stated that he could not be in a position to state that the petitioner was not entitled to disability pension once an expert has found that he was suffering from disability which was assessed more than 30%.

What has been stated hereinabove, we find no force in this appeal. The same is, accordingly, **dismissed** along with connected CMP(s), if any.

Interim direction, if any, shall stand vacated forthwith.

**(Sunil Hali)
Judge**

Jammu
11.02.2011
'Madan' PS

**(Virender Singh)
Judge**