

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW No. 208/2004

CMA no. 251/2004

Date of judgment: 31.03.2015

1. Union of India through,
Ministry of Defence, North Block,
New Delhi.
2. Commandant Abhilekh Grenadier Records,
The Grenadier Post Bag No. 17, Jabalpur (MP- 482001).
3. 13 FF Rifles, Machine Gun Battalion,
Presently the Grenadiers, Post Bag No. 17, Jabalpur
(MP- 482001).

Appellants.....

Smt. Ram Pyari W/O Late Sh. Jewan Singh
R/O Birpur Tehsil & District Samba,
Jammu.

Respondent.....

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing counsel:

For the Appellant(s)	:	Mr. R. S. Jamwal, CGSC.
For the Respondent(s)	:	Mr. R. K. Gupta, Sr. Advocate with Mr. Prem Sadotra, Advocate.

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| i/ | Whether to be reported in
Press/Media | : | Yes |
| ii/ | Whether to be reported in
Digest/Journal | : | Yes |
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N.Paul Vasanthakumar,CJ

1. This appeal is filed by the Ministry of Defence and its officials against the order of the learned Single Judge made in SWP No. 571/2003 dated 19.09.2003.

2. The case put forward by the writ petitioner (since deceased) before the learned Single Judge was that he was a permanent resident of Jammu and Kashmir State. He joined the Indian Army as a Sepoy in the year 1941 and was assigned F. F. Rifles and his Army No. was 23354. He was promoted as Naik within two years from the cadre of Sepoy in the Indian

Army. He was sent to Burma in connection with War having been found of extraordinary courage. He was awarded four medals for his meritorious services. In the year 1947, due to his illness which arose due to stress and strain, he was admitted in Military Hospital at Bangkok where from he was sent to Training Centre Abbotabad. He was discharged on medical grounds on 22.03.1947. At the time of his selection as Sepoy in Indian Army he was subjected to various medical tests, and having not noticed any deformity/ illness he was selected by the authorities and the medical disablement had arose only due to stress and strain while discharging military services. From 20.11.1944 to 12.08.1946 he was in the war field which aggravated his stress and strain.

3. It appears the deceased wit petitioner applied for grant of disability pension repeatedly but no reply was given. Ultimately he approached the Prime Minister of India for redressal of his grievance and the Prime Minister's office through letter dated 05.03.2001 gave reply stating that his representation was forwarded to the Defence Secretary for appropriate action. The Assistant Record Officer of Vayu Raksha Topkhana Abhilekh Air Defence Artillery Records Nasik wrote a letter dated 16.05.2001 calling upon the deceased petitioner to furnish his Army number which was duly furnished immediately. On 13.07.2001 the 2nd appellant informed the deceased writ petitioner that the service documents have been destroyed,

therefore, he was not entitled to any type of pension. After receiving the said reply the deceased petitioner filed the writ petition praying for issuing writ of mandamus for a direction to the appellants to pay arrears of pension benefits to the petitioner along with interest. When the said writ petition was filed by the petitioner in the year 2001 his age was 81 years. The writ petition was allowed by the learned Single Judge on 15.09.2003 against which the appeal has been filed and during the pendency of the L P Appeal the writ petitioner died and his widow, namely, Ram Pyari was brought on record and she is contesting the case for getting the arrears of pension till the date of death of her husband and for sanction of family pension.

4. The writ petition was opposed by the appellants before the learned Single Judge by contending that as per the roll maintained by the Grenadiers, the deceased writ petitioner was enrolled in the Army on 28.05.1941 and invalidated out of service on 22.03.1947. A sum of Rs.78 on account of service gratuity and a sum of Rs.187.82 on account of defence pay was paid to him. The writ petitioner was not granted any pension and he did not approach the appellants for about 56 years. The service and medical documents of the petitioner has already been destroyed after expiry of retention period of 25 years under the rules. In para No.9 of the reply it is stated that in the discharge order the percentage of disability of the deceased writ petitioner was not recorded, however the fact that writ

petitioner was medically invalidated out of service, is accepted. The further contention of the appellants before the learned Single Judge was that due to passage of time the records are not traceable, therefore, the percentage of disability cannot be assessed for sanction of pension to the writ petitioner.

5. The learned Single Judge considering the fact about admission of the appellant that writ petitioner was recruited in the year 1941 and served up to 22.03.1947 and he having been medically discharged due to mental disablement, on considering the fact that deceased writ petitioner approached the Prime Minister of India as per the letter of Prime Minister's office on 05.03.2001, came to the conclusion that due to medical disability only the writ petitioner was discharged, therefore, he is entitled to get disability pension from the date of discharge from service on medical grounds by relying upon the earlier judgment dated 08.09.2003 passed in SWP no. 549/2003 titled Mani Ram vs. Union of India.

6. The contention of the appellants before this Court is that no records are available to verify the disability of the deceased writ petitioner and there was unreasonable delay in claiming the disability pension. The learned Single Judge was not right in ordering disability pension from the date of discharge even assuming that the deceased writ petitioner was entitled and the said order is without noticing the delay and laches on the part of the writ petitioner.

7. In answer to the said submission, the learned counsel for the first respondent-widow submitted that when initially the deceased writ petitioner was enrolled as Sepoy his physically and mental fitness was assessed by the duly constituted Medical Board and after noticing that there was no disability, he was enlisted in the Military services and he having been posted in the War Zone, he developed mental illness for which he was given treatment and ultimately he was discharged on medical invalidation, therefore, the disability suffered by the petitioner was during the course of employment in the military service and therefore the appellants are not justified in denying the disability pension.

8. In so far as the delay aspect is concerned, the learned counsel submitted that the first respondent submitted that deceased writ petitioner was approaching the appellants by various representations and having not received any reply, he submitted a representation to the Prime Minister of India which was forwarded by the Prime Minister's office on 05.03.2001 and thereafter reply was given on 16.05.2001 by the appellants through Assistant Records Officer for Commanding Officer calling upon the deceased petitioner to submit the Army Number which was also furnished and even thereafter the disablement pension was not sanctioned. Therefore, the disability pension may be sanctioned and paid three years prior to the representation submitted to the Prime Minister till the date

of death of the writ petitioner and family pension from the date of death of the writ petitioner to the first respondent. In support of his contention he has relied upon the judgment of Hon'ble the Supreme Court reported in **2015 (2) Scale 371 (Union of India and ors. V. Rajbir Singh)**.

9. Learned counsel for the first respondent also cited a judgment of Hon'ble the Supreme Court reported in **2007 (1) Supreme 455 (Shiv Dass vs. Union of India and ors)** for the proposition that if the claim is made beyond reasonable period for claiming pension including disability pension, it can be restricted to a reasonable period of three years prior to the demand.

10. We have considered the rival submissions. It is not in dispute that the petitioner was enrolled as a Sepoy and the enrolment was made after verification of physical as well as mental fitness by a duly constituted Medical Board. Thus, it is evident that on the date of enlisting the deceased petitioner he was hale and healthy and without any medical disability. He has served in Army for about six years and during his service, he was awarded four medals and the said fact reveals the honest, sincere and dedicated service rendered by the deceased petitioner in the Army and he was medically alright. It is also not disputed that the deceased petitioner was posted in the War zone and he developed mental disorder for which he was given treatment and after noticing the medical disability he

was discharged from Army with effect from 22.03.1947. The principle laid down by the Judgment of Hon'ble Supreme Court reported in **2015 (2) Scale 371 (Union of India and ors. V. Rajbir Singh)**. It is held that if on the date of enlistment no disability was noticed by the selecting authority (Medical Board) there is a presumption that a person selected is not suffering from any disability and if the disability was noticed during the period of service there is a presumption that during the course of the service only the disability/ illness has caused. In para 15 it is held thus:-

“.....a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry

into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.”

11. In this case, the appellants having admitted the discharge of the deceased writ petitioner due to medical grounds and he having served from 1941 to 1947 meritoriously, it is not open to the appellants to contend that there is no record to prove the percentage of the disability of the writ petitioner and the disability was not due to military service. Hence, the order of the learned Single Judge holding that the deceased writ petitioner was entitled to disability pension cannot be found fault with.

12. In so far as the delay and laches on the part of the writ petitioner is concerned, definitely there is a delay from 1947 till 2001 and same has not been explained except stating that he was pursuing the matter with authorities. It is well settled in law that payment of pension or family pension is having a continuous cause of action. Hence the disability pension cannot be denied on the ground of delay/laches. Hon'ble the Supreme Court in the decision reported in **2007 (1) Supreme 455 (Shiv Dass v. Union of India and ors)** considered a similar issue. In paragraph 10 it is held thus:-

“ 10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the court would reject

the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition in that score alone.

13. By following the said judgment the date of sanction of the disability pension is restricted to three years prior to the date of demand made by the writ petitioner till the date of death of the writ petitioner and family pension to the 1st respondent thereafter.

14. In fine the deceased writ petitioner having established his right to get the disability pension, this appeal is disposed of by modifying the order of the learned Single Judge holding that the appellants shall sanction disability pension to the writ petitioner from 05.03.1998 till his death i.e. 08.12.2011 and from the date of death of the writ petitioner the family pension shall be sanctioned to the 1st respondent. The said exercise is directed to be completed by the appellants within a period of two months and arrears payable towards the disability pension and family pension has to be calculated and disbursed to the 1st respondent within one month therefrom.

15. No costs.

(Bansi Lal Bhat)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
31.03.2015
Anil Raina, Secy