

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 5017 of 2001 (O&M)
Date of decision:- 27.03.2015

Union of India through its Secy and others

...Appellants

Versus

Ex Constable Jagga Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Heman Aggarwal, Advocate
for the appellant

Mr. H.S. Ghuman, Advocate
for the respondent.

RITU BAHRI J.

This regular second appeal is directed against the judgment and decree dated 26.04.2001 passed by learned Addl. District Judge, Bathinda, whereby the judgment and decree dated 23.01.1996 passed by learned PC Civil Judge (Jr. Divn.), Bathinda was dismissed.

Brief facts of the case are that the respondent joined his services on 01.09.1965 as Constable in Border Security Force and before joining his service, he was medically examined and was found quite fit. After receiving a rigorous training, he was posted at various places. On the basis of medical examination conducted by the Medical Board during 1975, he was awarded Category EEE permanent and having not been found fit for service and

was thus discharged but was awarded Rs.50/- per month for a period of ten years from the B.S.F benevolent fund in addition to Rs.2000/- as financial assistance in lump-sum and was not granted medical or disability pension at all by the appellants to which he was legally entitled. He filed a number of applications/representation claiming that he be granted medical pension but to no effect.

The suit was contested by the appellants and raised legal objections regarding limitation and territorial jurisdiction. It was admitted that the respondent was enlisted in P.A.P on 01.09.1965 and embodied into BSF on 01.07.1966 and was discharged from B.S.F on 28.03.1975 on medical grounds. It was further admitted that respondent was medically examined and found fit at the time of entry in service. It was further admitted that the respondent was medically boarded out on 28.03.1975. He was not granted medical pension/disability pension, as he did not become medical unfit as a result of his service.

The trial Court dismissed the suit of the respondent on the ground that he has not suffered disability on account of the condition of his service and as per opinion of medical board as well as review medical board, the disability is not attributable directly to the condition of service.

The respondent filed an appeal before the lower Appellate Court and the issue with regard to the suit barred by limitation was not pressed in view of the judgment of Ex. Sep. Roshan Lal v. U.O.I 1992(2) Service Cases Today 254.

The lower Appellate Court proceeded to examine the question whether the respondent was entitled to medical/disability pension.

The respondent joined his services on 01.02.1965 and he was medically examined and was found fit to join the force. After completion of 10 years of service, he was found to be suffering from an effective-psychosis and as such, was found unfit to be retained in service and was boarded out of his service on 28.03.1975. The Lower Appellate Court referred to the judgment of this Court in case of Ex. Sep. Satpal Singh v. U.O.I 2000(3) RCJ (P&H) 703 and the judgment of Hon'ble the Supreme Court in a case of Sep. Hoshier Singh v. U.O.I and others 1996(3) SCT 87 (SC) wherein it was held that when an employee was found physically fit at the time of his enrollment and there was no finding of any medical board at the time against him, it has to be inferred that the disability suffered by him was attributable to his service. He is to be held entitled to receive disability/medical pension.

By referring to the judgment of this Court in a case of H.S. Grewal Major (Lt. Col.) v. U.O.I and others 1999(1)

SLR 158 the respondent could not be held entitled to the said disability pension for a period of 18 years since he was discharged on 28.03.1975 but was entitled to the arrears of disability pension falling within the period of limitation of three years immediately preceding the filing of this suit on 12.08.1993. The lower Appellate Court granted the relief of medical/disability pension w.e.f 12.08.1993.

The present appeal was admitted on 07.08.2002 and the operation of impugned judgment dated 26.04.2001 was stayed. Thus, the respondent was denied the benefit of disability/medical pension for the last about 40 years.

Reference at this stage can be made to a Division Bench judgment of this Court in a case of Ex. Sepoy Bhola Ram v. U.O.I and others, 2008 (2) SCT 380 wherein the petitioner was re-enrolled in defence Security Corps as Sepoy on 10.10.1990 after he was found medically fit. He was posted at various stations and performed security duty in various Ammunition Depots, Air Force Stations and Headquarters in field and peace areas and was discharged from service on 29.02.1990 under Rule 13(3) iii (i) of Army Rules, 1954 on fulfilling the conditions of enrollment. He was granted service pension for life w.e.f 01.03.1990. His claim for disability pension was rejected on the ground that he was not fulfilling the eligibility conditions, as determined by the

Screening Board i.e the individual should not be in Permanent Low Category S2 H1 A1 P3 E1, as the Release Medical Board had diagnosed the petitioner and found that he is suffering from Cervical Spondylosis 721 and Unspecified Psychosis 298. It was held that disease Unspecified Psychosis 298 is the same as Psychosis and Psychoneurosis mentioned in Annexure III to Appendix II referred to in Regulation 173 of Army Pension Regulations. Psychosis means mental illness and neuroses means a mental state resulting in high level of anxiety, unreasonable fears and behaviour. The disease Unspecified Psychosis is included in the list of disease affected by stress and strain mentioned in the regulations, therefore, the person invalidated from Army Service on the ground of suffering from Unspecified Psychosis 298 is entitled to disability pension. In para 8 of the judgment, it has been held as under:-

“Appendix II, referred to in Army Regulation 173, contains Entitlement Rules for Casualty Pensionary Awards, 1982. Annexure III to Appendix II mentions Classification of Diseases. At Clause B, list of Diseases Affected by Stress and Strain are mentioned. The disease “Psychosis and Psychoneurosis” is mentioned in Clause B at serial

No.1. The disease mentioned as "Psychosis and Psychoneurosis" in Annexure III to Appendix II ibid or "Unspecified Psychosis", from which the petitioner is suffering, is one and the same. Psychosis means mental illness and neurosis means a mental state resulting in high level of anxiety, unreasonable fears and behaviour. It is, thus, clear that the disease "Unspecified Psychosis", suffered by the -5- Civil Writ Petition No.10451 of 2007. petitioner, is included in the list of Diseases Affected by Stress and Strain mentioned in Annexure III to Appendix II ibid. Therefore, the action of the respondents in declining disability pension to the petitioner for the disease "Unspecified Psychosis", which is attributable to and aggravated by Army service, cannot be upheld. Accordingly, the orders passed by the respondents in this regard are set aside."

The writ petition was allowed and the petitioner was entitled to disability pension @ 50%.

Recently, Hon'ble the Supreme Court in a case of Dharamvir Singh vs. U.O.I and others, 2013(3) SCT 778 while interpreting Rule 423 of General Rules, in para 32 and 33 held as under:-

32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions."

Reference can be made to a Division Bench judgment passed by this Court in a case of U.O.I and others

v. Smt. Roshni Devi in LPA NO. 613 of 2010, decided on 24.08.2010 (of which the present Judge was the second member of the bench), was examining a case where the employee of BSF was on earned leave and during this period, he had sustained injuries and later on died. The writ petition was allowed on the ground that disability suffered by him during leave would be attributable to his service. Reference in this judgment to a case i.e CWP No. 6531 of 2005, decided on 21.05.2008.

So, the consistent view of this Court as well as Hon'ble the Supreme Court is that once an employee had joined his service and he was found medically fit and thereafter, if he sustained any injury while in service, it would be attributable to his service and thus, he could not be denied the benefit of disability/medical pension on the ground that he was not medically fit.

The judgment and decree dated 26.04.2001 passed by learned Addl. District Judge, Bathinda do not suffer from any misreading of facts. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

27.03.2015
G Arora

(RITU BAHRI)
JUDGE