

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 1472 of 2015 (O&M)
Date of Decision: October 21, 2015

Union of India and others

.....Appellants

Versus

Manpal

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present: Shri Pawan Kumar Longia, Advocate, for the appellants.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported?

Hemant Gupta, J.

The present Letters Patent Appeal is directed against an order dated 14.5.2015 passed by the learned Single Judge, whereby the writ petition claiming disability pension on account of injuries suffered by the writ petitioner (the present respondent) was allowed.

The learned Single Judge, referred to a Division Bench judgment of this Court in CWP No. 17792 of 2013- Barkat Masih v. Union of India and others, decided on 23.5.2014 as well as an order passed in Civil Appeal No. 2903 of 2011- Pension Sanctioning Authority PODA(P) Allahabad and others v. M.L. George, EX.SGT, decided on 17.09.2014, to allow the writ petition.

Learned counsel for the appellants in the present appeal vehemently argued that both the aforesaid judgments pertain to the

armed forces personnel governed by the Army Act, whereas the writ petitioner was enrolled in Assam Rifles, which is not governed by the Army Regulations but by the Central Civil Services (Extraordinary Pension) Rules, 1939 (for short the Rules). Thus, the very basis of the order is on mistaken fact and as such, the order passed by the learned Single Judge, is liable to be set aside. He argued that even under the aforesaid Rules, the writ petitioner is not entitled to disability pension for the reason that he has suffered injuries more than five years before the date of submission of an application and that the writ petition was filed even much later.

To appreciate the arguments raised by the learned counsel for the appellant, it is necessary to notice certain facts. The writ petitioner was enrolled on 13.01.1987 in the Assam Rifles as a rifleman. He suffered 'fracture both bones (left) Leg' while on duly sanctioned casual leave in his home town. He was downgraded and subsequently invalidated out of service on 31.5.2000. The report of the Medical Board dated 8.11.1999 has been appended as Annexure R.1. The Column (e) in such report is 'whether attributable/ aggravated to service or not?' As per such report, the answer of the medical board is 'not attributable, however, aggravated due to service condition.

The relevant Rules would read as under:-

“3-A (1) Disablement shall be accepted as due to Government services, provided that it is certified that it is due to wound, injury or disease, which,

- (i) is attributable to Government service, or
- (ii) existed before or arose during Government service and has been and remains aggravated thereby.

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- (2) There shall be a casual connection between,
 - (a) disablement and Government service; and
 - (b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard

are given in the Appendix which shall be treated as part and parcel of these Rules.”

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- (6) No award shall be made in respect of,
- (a) an injury sustained more than five years before the date of application, or
- (b) death which occurred more than seven years,
- (i) after the injury due to violence or accident was sustained, or
- (ii) after the Government servant was medically reported as unfit for duty on account of the disease or which he died.”

Such Rules came to be amended vide notification dated 15.02.2011, when sub-rule (3) has been inserted in Rule 8. Note (1) so inserted reads as under:-

“Note 1: The findings of the Medical Board on the extent of disability may be treated as final and binding unless the employee himself seeks a review by preferring an appeal to an Authority immediately superior to the one who had constituted the Board. In case the appeal is accepted and a review Medical Board is constituted, the findings of the Board shall be binding on all parties. The extent of disability as determined and accepted shall be treated as final and the employee shall not be required to appear before Medical Board periodically for the purpose of obtaining a certificate that the disability continues to persist.”

The judgments referred to either by the learned counsel for the petitioner or the appellants pertain to the armed forces personnel. Though the said judgments do not deal with the Rules yet the principles enshrined therein are the guiding factors for determining the claim for disability in respect of the personnel governed by the Rules.

As per Rule 3-A(1)(ii), disablement is accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which is attributable to Government service

or existed before or arose during the Government service and remains aggravated thereby. As per the opinion of the Medical Board, though the fracture is not attributable to Government service yet the same having been suffered during Government service and found to be aggravated thereby, therefore, the writ petitioner satisfies the basic conditions for grant of disability pension as per Rule 3(A)(1)(ii) of the Rules.

In the case of the armed forces personnel, the requirement is that the disease should be either attributable or aggravated to service condition. There is a material distinction in Clause (ii) of Rule 3-A(1), whereby it has been stipulated that even if the disease, wound or injury arose during the service and has been aggravated thereby, the personnel is entitled to disability pension.

The opinion of the Medical Board has to be accepted and the pension sanctioning authority cannot decline the claim of the writ petitioner for disability pension rejecting the opinion of the Medical Board. Such is the view taken by this Court in “CWP No. 7277 of 2013 decided on 14.5.2014 - Ex. Naik Umed Singh v. Union of India,”. Such is the view taken in Ex. Naik Umed Singh’s case, wherein Question No.1 examined was to the effect - “Whether the Armed Forces Tribunal or Writ Court in exercise of power of judicial review can re-examine the report of release Medical Board categorizing the disability either not attributable to Military Service or aggravated by Military Service? The Court concluded as under:-

“Therefore, if no note of the disease is made at the time of individual’s acceptance in military service, it raises a presumption that an individual’s discharge or death, will be deemed to have arisen for reasons attributable to or aggravated by service. The exception carved out in Clause 14(b) is that if medical opinion holds for reasons to be recorded that the disease could not have been detected on medical examination prior to acceptance of

service, the disease will not be deemed to have arisen during service. Therefore, if the Invalidating or Release Medical Board has not given any categorical opinion that the disease could not have been detected on medical examination; the disease which led to discharge of an individual will be deemed to have arisen in service, then this court in exercise of the power of judicial review will strike down such decision for the reason that the Medical Board has failed to carry out the mandate given to them by the Regulations and the instructions by the Central Government. But, if the Invalidating or Release Medical Board has categorized that the disability is either not attributable to military service or aggravated by military service for the reason that it could not be detected at the time of entry into service, then the said opinion is in terms of the Regulations and instructions issued and cannot be substituted while exercising the powers of judicial review.”

Not only the principles of law while examining the grant of disability pension to the personnel of the armed forces are applicable to the disabled personnel of para military forces, but even the Rules now amended make it clear that the findings of the Medical Board are final. In the present case, the Medical Board has opined that there was aggravation during the Government service, the said report entitles the petitioners to the disability pension in terms of Rule 3A(1)(ii) of the Rules.

In respect of the argument that the writ petitioner is not entitled to disability pension for the reason that the injury was sustained more than five years before the date of submission of the application in terms of Rule 6, is again not tenable. Once, the Medical Board has opined that the injury stands aggravated during the Government service, the writ petitioner is entitled to disability from the date of discharge. However, the appellants declined to grant disability pension only because the writ petitioner submitted an application for petitioner on 26.11.2007.

The claim of disability pension confers recurring cause of action. In Ex. Naik Umed Singh's case (supra), the Division Bench examined the similar argument and concluded to the following effect:-

“.....We may notice that the reliance of the learned counsel for the respondents on the judgment of Supreme Court in State of Punjab Vs. Gurdev Singh, AIR 1991 SC 2219 is not applicable to the facts of the present case because that was a case of cessation of service on account of an order of dismissal. The order of dismissal gives rise to an actionable cause which is required to be challenged within the period of limitation; else the claim would be barred by time. On the other hand, the claim of pension including disability pension would stand on a different footing. The right to claim pension would arise only on attaining the age of superannuation or discharge but excluding the case of dismissal or removal from service.

However, since a person has approached after delay, the claim of arrears would be restricted to a period of three years prior to initiation of lis, as any claim for money could be lodged only within three years from the date right to recovery arises in terms of Article 137 of the Limitation Act, 1963. Therefore, we find that the claim of disability pension cannot be declined for the reason that it was not raised within three years of discharge from the Army, but the payment of arrears would be restricted to a period of three years before the initiation of lis.”

Thus, we find that the claim of disability pension confers the petitioner with the recurring cause of action and therefore, the same cannot be declined for the reason that the petitioner claimed the same after 5 years in terms of Rule 6 of the Rules.

We may notice that the learned counsel for the appellants relied upon a recent order of the Hon'ble Supreme Court in “Civil Appeal No. 6583 of 2015 - Union of India and others v. Ex-Naik Vijay Kumar” decided on 26.8.2015. That was a case where the member of

the armed forces suffered disability, when he was on 30 days' annual leave. The Court found that the member of armed forces who is claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to the person and the normal expected standards of duties and a way of life expected from a member of armed forces. The said judgment relates to different Service Regulations when there was no provision analogous to Rule 3A(1)(ii) of the Rules, and therefore, does not advance the argument raised by the learned counsel for the appellant.

In view thereof, we find that the writ petitioner has been rightly found entitled to disability pension, but for the reasons other than the ones recorded by the learned Single Judge. However, the petitioner can be declined benefit of disability pension beyond the period of three years prior to the submission of representation on 26.11.2007.

Consequently, there is no merit in the present appeal and the same is accordingly dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

October 21, 2015
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