

2023:PHHC:103546-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 107

LPA-355-2021 (O&M)

Date of decision : 09.08.2023

Union of India and others

..... Appellants

Versus

Yad Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
 HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr.Anil Chawla, Advocate, for the appellants.

Mr.Ramesh Malik, Advocate, for the respondent.

DEEPAK SIBAL, J. (Oral)

1. The present intra court appeal is directed against the judgment dated 18.12.2019 passed by a learned Single Judge of this Court allowing the respondent's writ petition.

2. On 10.11.1993 the respondent joined the Border Security Force (for short, the BSF) as a Washer-man Constable. On 19.08.2006 the respondent was examined by a medical board constituted by the BSF which, after examining him, came to the conclusion that the respondent was suffering from "Peripheral Vascular Disease" (for short, PVD). On account of such disease the medical board assessed the respondent's disability at 60%. The respondent's medical condition was reviewed by another medical board of the BSF which, through its report dated 29.01.2007, reiterated the opinion of the earlier board. Due to the respondent's afore medical condition he was considered unfit to serve the BSF. Resultantly, through order dated 06.02.2007, on the ground of medical unfitness, the respondent was retired from service w.e.f. 15.02.2007. Through the same order he was also held entitled to pensionary and other benefits as admissible to persons discharged from service on account of medical invalidation. Since on

him being retired from service, the respondent was granted pension as admissible to medically invalid pensioners in terms of the Central Civil Services (Pension) Rules, 1972 and not extra-ordinary pension or disability pension, he represented his case to the authorities claiming therein disability pension but when such representations of his went unanswered he got served upon them a legal notice dated 09.10.2014. Through an order dated 20.10.2015 the BSF responded to the respondent's legal notice and denied the respondent's claim on the ground that the disease, on the basis whereof he had been retired from service, was not attributable to the conditions of his service. Such denial by the BSF became the subject matter of challenge by the respondent through a petition filed before this Court which was allowed through the order assailed through the instant intra court appeal.

3. Learned counsel for the appellants submitted that as per Rule 3-A of the Central Civil Services (Extraordinary Pension) Rules, 1939 (for short-the 1939 Rules) an employee of the BSF is entitled to the grant of disability pension only if he/she is discharged from service on account of a disease which is attributable to the conditions of his service; the respondent was retired from service on account of a disease which was attributable to natural causes; thus, he was rightly denied the grant of disability pension; the respondent's petition was also liable to be dismissed on the ground of delay and laches; through his petition the respondent did not challenge the order dated 06.02.2007 through which he had been denied the grant of disability pension and that the learned Single Judge allowed the respondent's case on the basis of the ratio of *Sunita Devi vs. Union of India and another* (CWP-17364-2016) which case was entirely different than that of the respondent as in *Sunita Devi's* case the issue was with regard to the grant of *ex-gratia*/family pension whereas in the instant case the claim made by the respondent was for the grant of disability pension.

4. Per contra, learned counsel for the respondent submitted that on

10.11.1993 the respondent was enrolled as a member of the BSF; at the time of his enrolment the respondent was declared medically fit; at the time of his medical examination before his enrolment no note of any disease or medical disability suffered by him was recorded by the medical board; therefore, the disease suffered by the respondent, on the basis whereof he was retired from service, would be deemed to have been attributed to his service; there is no delay on the respondent's part in claiming relief as he had always been representing his case with the BSF; only when his pleas fell on deaf ears was he constrained to get served upon the appellants a legal notice; on delay and laches, the stand of the appellants is discriminating as similarly placed persons, who had been retired like the respondent and had claimed disability pension after about the same time as the respondent had also approached this Court for similar relief and when their petition was allowed the appellants accepted those orders and that one of such persons was Surender Singh whose case was allowed by this Court through a judgment reported as 2020(2) PLR 512-*Surender Singh vs. Union of India and others*.

Learned counsel for the respondent also placed reliance on the following judgments: -

1. *Dharamvir Singh vs. Union of India* (2013) 7 SCC 316;
2. *Union of India and another vs. Rajbir Singh* (Civil Appeal No.2904 of 2011, decided on 13.02.2015); and
3. *Union of India vs. Kashmir Singh* (LPA-737-2010, decided on 30.06.2010).

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. The appellants hold the respondent ineligible for the grant of disability pension only on the ground that the disease, which formed the basis to retire the respondent, was attributable to natural causes and not to the conditions of his service.

7. The respondent was a member of the BSF, a force which secures and guards the borders of our country. Therefore, it can safely be presumed that at the time when the respondent was enrolled as a member of the BSF he was in sound physical and mental condition. This fact is also not disputed by the appellants. No medical record of the respondent in this regard has also been produced by the appellants which would be even suggestive of a fact to the contrary. A perusal of the opinions of the medical board dated 19.08.2006 and 29.01.2007 as also the order dated 20.10.2015, on the basis whereof the respondent was considered unfit to continue in service and retired from service as also denied the grant of disability pension, is also found bereft of any reason justifying such denial. In the afore referred opinions the medical board has simply assumed that the disease suffered by the respondent is not attributable or aggravated due to service. The respondent's earlier medical record was neither seen nor discussed by either of the medical boards. The opinions of the medical board are found to have been given in a rather casual manner.

8. In view of the above, it would be safe for us to conclude that at the time of entry in service the respondent was physically and mentally fit. Therefore, the medical condition on the basis whereof the respondent was declared unfit to continue in service would be deemed to be connected with his service conditions.

9. The afore view of ours finds support from the following observations made by the Supreme Court in *Dharamvir Singh's* case (supra): -

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:-

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of

proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)];

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

29. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service.

(emphasis supplied)

10. To the same effect are the below reproduced observations of the Supreme Court in *Rajbir Singh's* case (supra): -

"15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that 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.

(emphasis supplied)

11. On 23.08.1995 one Surender Singh was enrolled as a member of the BSF. While in service he started showing abnormal and erratic behavior with violent outbursts. He also complained of suffocation and remained hospitalized on various occasions. Ultimately, the medical board found him unfit to serve the BSF. On the basis of such opinion Surender Singh was retired from service w.e.f. 29.11.2006. On his retirement he was not granted extra-ordinary pension or disability pension as the medical board in his case was of the opinion that the disease on the basis whereof he was retired from service was not attributable to the conditions of his service. After 09 years of his retirement i.e. in the year 2015 Surender Singh claimed disability pension which claim of his was rejected on 20.10.2015. He challenged such rejection through a writ petition filed before this Court which was allowed by a learned Single Judge of this Court on 04.03.2020.

A relevant extract from the said judgment is as follows: -

“7. It is an admitted fact that the petitioner has been invalidated from service due to the reason the petitioner was suffering from AFFECTIVE PSYCHOSIS due to which he could not have been retained in service as he was unfit for the same. The disability pension has been denied to the petitioner only on the basis that the Medical Board has opined that the said disease is not directly attributable to the condition of service.

8. The respondents have nowhere contended in the reply or even in the impugned order that even at the time of the recruitment, the petitioner was suffering from the said disease. Once, the petitioner who was an eminent sportsman, was recruited in the category of Sports, it cannot be said that the petitioner was suffering from the said disease, the cause of which is only stress and strain, even at the time of the recruitment in 1996. Even the Medical Board, which examined the petitioner, has stated that the stress and strain of the service has aggravated the said disease and the percentage of disability was assessed as 70%.

9. Once, there is nothing on record to show that the petitioner was unfit at the time of recruitment or was suffering from the said disease, it can be safely held that the petitioner suffered the said disease while in service as the causes of the same were stress and strain and the said cause aggravated the disease.

(emphasis supplied)

12. The facts in *Surender Singh*'s case and that of the respondent are very similar. Learned counsel for the appellants also very fairly admits so.

Learned counsel for the appellants further does not dispute that in the raising of the claim for disability pension in *Surender Singh*’s case (supra) also there was a similar delay as in the case of the respondent but in *Surender Singh*’s case, after his petition was allowed by this Court, the appellants did not challenge the judgment rendered in his favour. Rather, such judgment has been allowed by the appellants to attain finality and has also been complied with.

13. In the light of the above, we are of the opinion that the impugned judgment of the learned Single Judge warrants no interference.

Dismissed.

[DEEPAK SIBAL]
JUDGE

09.08.2023
shamsher

[SUKHVINDER KAUR]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No