



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18788-2024 (O&M)
Date of Decision: 22.08.2024

UNION OF INDIA AND ANR
...Petitioners
Versus
NO 6297516 SIGNAL MAN SUBASH CHANDER AND ANR
...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Ms. Neha Jain, Advocate
for the petitioners (Senior Panel Counsel-UOI).

Mr. Navdeep Singh, Advocate with
Mr. Rajesh Sehgal, Advocate and
Mr. Ajay Sheoran, Advocate for respondent No.1.

SUDHIR SINGH, J.

The petitioners have filed the present writ petition for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 01.10.2018 (Annexure P-7) passed by the learned Armed Forces Tribunal, Chandigarh Bench, Chandimandir (for short 'the AFT'), whereby the OA filed by respondent No.1 was partially allowed and he was held entitled to the service element of disability pension for life. The petitioners have also assailed the order dated 20.01.2021 (Annexure P.8), whereby an application for review of the aforesaid order, was dismissed.

2. The brief facts of the case are that the respondent No.1 was enrolled in Army on 16.07.1963 and was discharged from service

on 04.04.1968 at his own request on compassionate grounds in Low Medical Category CEE (permanent) for the disease “SUPRA CONDYLAR FRACTURE LT ”. He opted for Premature Retirement vide his application dated 11.01.1968, by submitting an unwillingness certificate to continue his service. After 45 years of his discharge respondent No.1 made representations 11.09.2015 and 10.10.2015, for grant of disability pension. The same were rejected by the authorities vide letter dated 12.12.2015, on the ground that respondent No.1 had submitted an unwillingness certificate on 23.12.1967 to be in further service. He filed Original Application before the learned AFT. The petitioners (being respondents before the learned AFT) filed reply disputing the averments made in the Original Application in respect of entitlement of respondent No.1 to disability pension. The learned AFT vide order dated 01.10.2018, disposed of the Original Application filed by the respondent No.1, holding him entitled to the disability pension.

3. Learned counsel appearing for the petitioners-Union of India vehemently argues that as respondent No.1 had submitted an application before the Army Authorities seeking retirement on compassionate grounds and not claiming any benefit, including the disability pension, he is not entitled to grant of service element of disability pension for life. It is further submitted that the injuries suffered by the respondent No.1 leading to his discharge on compassionate ground, is neither attributable to nor aggravated by Military service and, therefore, respondent No.1 is not entitled to grant of disability pension.

4. On the other hand, learned counsel appearing for respondents submits that even if respondent No.1 had given his willingness at the time of his discharge as regards not claiming any disability pension, then also he is entitled to disability pension for the reason that as per the policy of the Government itself, the disability pension is to be granted to all the members of the Armed Forces who had voluntarily retired from the service.

5. We have heard learned counsel for the parties and have also gone through the paper book including the impugned order passed by the learned AFT.

6. A perusal of Medical Board Proceedings dated 12.12.1967 (Annexure P.1) would show that it was found by the Medical Board that respondent No.1 had sustained injuries to his left elbow before joining Army Service, and that he started having pain in the left elbow as a result of the Army Service and whenever he works he feels severe pain. The relevant extract from Annexure P-1, reads as under:-

“ This patient who sustained injury to his left elbow before joining Army Service. He started having pain in the left elbow as a result of Army Service. Now he is having pain and whenever works he feels severe pain. There is muscular wasting by 1 ½ inches of left forearm muscle 3 inches below olecranon process. No neurological deficit. Movements. Flexion and extension full. Varus deformity becomes prominent on full extension. Carrying angle decreased by 5 to 7 degrees. X-ray left elbow shows an old united supra condylar fracture. In view of findings and patient's refusal for operation for correction.

Recommended Permanent Med Cat CEE. Not attributable nor aggravated by Army Service.”

7. The question that requires to be considered by this Court is whether the injury suffered by the respondent No.1, is attributable to or aggravated by the Military Service.

8. As noticed above, before being discharged, the petitioner was examined by the Medical Board and the injury suffered by him was found to be existing before joining the military service and the same also found mention in the Medical Proceedings dated 12.12.1967. The placement of respondent No.1 in a permanent low medical category had its origin in the said injury, which was neither attributable to nor aggravated by the Military Service.

9. The Hon'ble Supreme Court in **Dharamvir Singh v. Union of India**, (2013) 7 SCC 316, has held that a member of the Armed forces is to be presumed to be in a sound physical and mental condition upon entering service, if there is no note or record at the time of entrance and in the event of his subsequently being discharged from service on medical grounds by any deterioration in his health, the same is to be presumed due to service. The relevant extracts from the judgment of the Hon'ble Supreme Court would read as under:-

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

29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be

determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)].

29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and **29.7.** It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles”, including Paras 7, 8 and 9 as referred to above (para 27).”

10. In the instant case, it is not disputed that as per the Medical Board proceedings dated 12.12.1967, recorded at the time of the entry of the respondent No.1 in the military service, the injury sustained by respondent No.1 in his left elbow, was existing. Therefore, the disability suffered by respondent No.1 on account of said injury leading to his discharge from the military service, cannot be said to be attributed to or aggravated by the military service and consequently, respondent No.1 cannot be held entitled to the service element of disability pension for life.

10. In view of the above, the present writ petition is allowed. The impugned orders dated 01.10.2018 and 20.01.2021, passed by the learned AFT, are set aside.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

22.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No