

Before Hemant Gupta and Mohinder Pal, JJ.

DARSHAN SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 14629 of 2006

17th March, 2008

*Constitution of India, 1950—Art. 226—Army Rules, 1954—
RL.13(3)III(iv)—Pension Regulations for the Army, 1961—Reg. 173-
A—Petitioner while in service sustained an injury—Request for
premature discharge—Release Medical Board assessing disability
at 20% and placing him in low medical category—Disability
pension—Denial of—Challenge thereto—Reg. 173-A provides that
individuals who are placed in a lower medical category and are
unwilling to accept alternative or sheltered employment shall be
deemed to have been invalidated from service—Petitioner is in
Low Medical Category he shall be treated as ‘invalidated from
service’ and entitled to disability pension—Whether on account of
seeking discharge at own request petitioner lost his right to claim
disability pension although disability is attributable to and
aggravated by military service—Held, no—No ground to reject his
claim of disability pension—Respondents directed to grant disability
pension to petitioner.*

Held, that the Release Medical Board had assessed the disability of the petitioner at 20% on February 19, 2005. Once the petitioner is in Low Medical Category because of the injury suffered by him, which is attributable to and aggravated by military service, according to Rules 1 and 2 of Appendix II of Pension Regulation 173, he shall be treated as ‘invalidated from service’. Once the petitioner is held to have been invalidated from service, he is entitled to disability pension. The respondents, in the written statement, have pleaded that as the petitioner refused to take sheltered appointment and had proceeded to pension establishment at his own request, he is not entitled to disability pension. This ground taken by the respondents is not tenable in view of the provisions of Pension Regulation 173-A, which specifically provides

that individuals who are placed in a lower medical category and are unwilling to accept the alternative employment or sheltered employment, shall be deemed to have been invalidated from service.

(Para 11)

Manohar Dadwal, Advocate, *for the petitioner.*

Naveen Chopra, Advocate, *for the respondents.*

MOHINDER PAL, J,

(1) Brief facts of the case are that the petitioner was enrolled in the Army on September 16, 1988 and was discharged from this service on May 31, 2005, under Rule 13(3)III(iv) of the Army Rules, 1954 (hereinafter referred to as ‘the Rules’), at his own request. While participating in Inter Coy Football Championship on March 16, 1999, the petitioner sustained injury Anterior Cruciate Ligament Tear (LT) Knee-V-67, Z-090 and was treated in Military Hospital, Meerut with effect from March 16, 1999 to December 23, 1999, Subsequently, he was down-graded to low medical category. Since the petitioner was placed in low medical category and was found to be unfit to perform the duties, he was again got admitted in the Military Hospital (Tangra Valley), Arunachal Pradesh on February 09, 2005 and was discharged from the hospital on February 12, 2005,—*vide* Discharge Slip (Annexure P-1). In the Discharge Slip (Annexure P-1), It was mentioned that the petitioner was “fit to be released from service in low medical category SIHIA2P1E1”. It is averred in the petition that after the Release Medical Board assessed the disability of the petitioner at 40% and he was placed in the category of A2 Permanent, he was discharged from service on May 31, 2005.

(2) The petitioner was granted service element of pension for the service rendered by him for more than sixteen and a half years, but the respondents denied him the disability pension on the ground that he was discharged from service at his own request.

(3) The prayer made in this writ petition is for issuing a direction to the respondents to grant the disability pension to the petitioner from the day he was discharged from service.

(4) In the written statement filed by the respondent, it has been pleaded that the petitioner,—*vide* his application dated 2nd May, 1994, requested for premature discharge due to his domestic problems which was recommended and forwarded to Records BEG, Roorkey, for necessary action. Based on request made by the petitioner, his premature discharge under Rule 13(3)III(iv) of the Rules was sanctioned by the Record Office,—*vide* letter dated November 30, 2004 (Annexure R-I). Release Medical Board was finalized on February 19, 2005 by Medical Authority with 20% disability. It has been pleaded that so far as disability pension to the petitioner is concerned, it was not granted to him because he was transferred to pension establishment at his own request and not on medical grounds. It is further pleaded that the petitioner was not willing to serve under sheltered appointment

(5) We have heard Mr. Manohar Dadwall, Advocate, appearing for the petitioner and Mr. Naveen Chopra, Advocate, appearing for the respondents and have gone through the records of the case.

(6) Admittedly, the disability suffered by the petitioner is attributable to and aggravated by military service. The question involved is whether on account of seeking discharge at own request, the petitioner has lost his right to claim disability pension although the disability is attributable and aggravated on account of military service. Had the petitioner been invalidated out of military service on account of 20% disability, he would have been granted the disability pension along with service element of pension. Merely because the petitioner has attained discharge at his own request, it will not be a ground to reject his claim of disability pension.

(7) As per the provisions of regulation 173-A of the Pension Regulations for the Army, 1961 (for short 'the Pension Regulations), those Army personnel who are placed in lower medical category permanently and are unwilling to accept the alternative employment and or having retained in alternative appointment, are discharged before completion of their engagement, shall be deemed to have been invalidated from service. As stated above, in this case, when the petitioner was discharged from Military Hospital (Tangra Valley), Arunachal Pradesh on February 12, 2005, it was mentioned in his Discharge Slip (Annexure

P-1) that he was “fit to be released from service in low medical category SIHIA2P1E1”.

(8) Pension Regulation 173-A reads as under :—

“173-A. Individuals who are placed in a lower medical category (other than ‘E’) permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note.—The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension.

(9) Rules 1 and 2 of Appendix II, referred to in Pension Regulation 173-A, are as follows :—

“1. xx xx xx

Invalidating from service is a necessary condition for grant of disability pension. An individual who at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCOs/ORs, Ncs(E) who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have invalidated out of service.

2. Disablement or death shall be accepted as due to military service provided it is certified that—
- (a) the disablement is due to wound, injury or disease which—
 - (i) is attributable to military service;
 - (ii) existed before or arose during military service and has been and remains aggravated thereby;
 - (b) the death was due to or hastened by—
 - (i) a wound, injury or disease which was attributable to military service; or
 - (ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.”

(10) A reference to the provisions contained in Pension Regulation 173 is also necessary, which are as under :—

“Primary conditions for the grant of disability pension :

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or above.

The question whether a disability is attributable to or aggravated by military service shall be determined under the Rule in Appendix-II.

(11) A perusal of the provisions of Pension Regulation 173 and Rules 1 and 2 of Appendix II makes it clear that ‘invalidated from service’ is necessary condition for grant of disability pension. What has to be seen for entitlement of disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited; if it is so, then such person will be treated as ‘invalidated from service’. It is admitted case of the

parties that while the petitioner was participating in Inter Coy Football Championship on March 16, 1999, he sustained injury Anterior Cruciate Ligament Tear (LT) Knee-V-67, Z-090 and was admitted in Military Hospital, Meerut for more than nine months. Later on, he was downgraded to low medical category. He was again got admitted in Military Hospital (Tangra Valley), Arunachal Pradesh on February 09, 2005 for this injury. The Medical Authorities at Military Hospital, Tangra Valley, had opined in the Discharge Slip (Annexure P-1), that the petitioner was "fit to be released from service in low Medical category SIHIA2P1EI". The Release Medical Board had assessed the disability of the petitioner at 20% on February 19, 2005. Once the petitioner is in Low Medical Category because of the injury suffered by him, which is attributable to and aggravated by military service, according to Rules 1 and 2 of Appendix II of Pension Regulation 173, he shall be treated as 'invalidated from service'. Once the petitioner is held to have been invalidated from service, he is entitled to disability pension. The respondents, in the written statement, have pleaded that as the petitioner refused to take sheltered appointment and had proceeded to pension establishment at his own request, he is not entitled to disability pension. This ground taken by the respondents is not tenable in view of the provisions of Pension Regulation 173-A, which specifically provides that individuals who are placed in a lower medical category and are unwilling to accept the alternative employment or sheltered employment, shall be deemed to have been invalidated from service.

(12) From the aforesaid reasons, we allow this writ petition and direct the respondents to grant disability pension to the petitioner on the basis of assessment of 20% disability as opined by the Release Medical Board in February 2004 upto date. The respondents will be at liberty to reassess the disability of the petitioner from the Re-Survey Medical Board under the rules. All the arrears to the petitioner be paid within two months from the date of receipt of a copy of this order, failing which he will be entitled to interest at the rate of nine per cent annum.

R.N.R.