Before Arun B.Saharya, C.J. & V.K. Bali, J

UNION OF INDIA—*Appellant*

versus

KARNAIL SINGH—*Respondent*

L.P.A. 1265 of 1991

7th December, 2001

Constitution of India, 1950—Art.226—Army Pensions Regulations, 1961—Regs. 48, 173, 178 & 179—Appendix II, Entry 7(b)—Grant of disability pension— Enrolment as a Soldier in the Indian Army—Loss of sight in one eye—Discharge from military service on completion of tenure of engagement—Plea of the petitioner that he had suffered injury in the eye on account of explosion of grenade in the training session totally falsified from the records—Disability suffered by the petitioner neither attributable to nor aggravated by military service—Petitioner cannot be deemed to have invalided from service in view of Regulation 179—Appeal allowed, order of Single Judge granting disability pension to the petitioner set aside.

Held, that from the reading of the regulations 48, 173, 178 and in particular Regulation 179, it would be made out that an individual, who retired or is discharged even on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years and is found suffering from disability attributable to or aggravated by military service, shall be deemed to have been invalided out of service and is entitled to disability pension from the date of retirement, if the accepted degree of disability is 20% or more. He is also entitled to service element if the degree of disability is less than 20%. As to whether a person, who retires or is discharged on completion of tenure or on superannuation would make no difference in entitling the individual for earning disability pension if the disability is attributable to or aggravated by military service. What really entitles an individual to earn disability pension is disability attributable to or aggravated by military service as in that event, he is deemed to have been invalided out of service.

(Para 9)

Further held, that perusal of the records would clearly demonstrate that the story coined by the petitioner with regard to explosion of hand grenade, thus, resulting into loss of eye sight is made up affair. It is totally falsified from the records of the case. Records of the case manifest beyond doubt that the petitioner was discharged from Military service on completion of tenure of his engagement and the injury or disability suffered by him was neither attributable to nor aggravated by Military service. In this situation, the petitioner cannot be deemed to have been invalided from service in view of Regulation 179 of the Pension Regulations, 1961.

(Para 10)

Gurpreet Singh, Advocate *for the appellants.*

Gurnam Singh, Advocate *for the respondent.*

JUDGMENT

V.K. BALI, J.

(1) Karnail Singh, who was enrolled as a Soldier in the Indian Army in the month of February, 1972 and discharged on Ist March, 1987, successfully challenged order, Annexure P-1, dated 6th November, 1986,—*vide* which his prayer for grant of disability pension was rejected, as Civil Writ Petition bearing No. 5539 of 1997 filed by him was allowed by the learned Single Judge on 11th July, 1991. It is this order of the learned Single Judge, which has since been challenged in this appeal filed under Clause X of the Letters Patent.

(2) Brief facts giving rise to the writ petition filed under Article 226 of the Constitution of India challenging order, Annexure P-1, as projected in the petition, reveal that Karnail Singh (hereinafter referred to as 'the petitioner') was enrolled as a Soldier in the Indian Army in the month of February, 1972. It has been his case that at the time of his enrolment, his eye sight (left as well as right) was 6/6. However, in the year 1975, he and other Jawans of 17 Sikhs Regiment were undergoing military training in the peace area of Ramgarh Sector. Soldiers were divided into two groups and one group was to attack the other with grenade No. 90 meant for training purpose. According to the petitioner, grenade thrown by the other group hit on his left hand and exploded. Due to the explosion, there was an extreme

lightening, due to which his vision of left eye started deteriorating. He informed Shri Dayal Singh, Subedar that because of the explosion of grenade, which was used during military training, pain had developed in his eye. He was immediately sent to the Captain, who was the Incharge of medical room. Thereafter his case was referred to Ramgarh Military Hospital. In January, 1976, the unit of which the petitioner was a member, was transferred to Meerut. On August 20, 1976, he was admitted in the Military Hospital. He was downgraded to medical category CEE (P) in December, 1978. In December, 1978, 17 Sikh Unit was transferred to Nagaland and he was operated upon in Military Hospital at Gauhati on November 30, 1978. Ultimately, the unit was transferred to Ferozepur in the year 1980 and his medical category was upgraded to BEE (P). It has further been the case of the petitioner that he lost vision in one eye during his service in the Indian Army and as such the said disability was attributed to or aggravated by military service, that he had rendered and further his disability was assessed at 40%. *Vide* letter dated November 6, 1986, Shri R.C. Sharma, Captain, Record Officer for Officer Incharge Records, Sikh Regiment Ramgarh Cantt, informed him that his disability pension had been rejected by the CDA (P) Allahabad,—*vide* their letter No. G-III/86/7406/III/135, dated October 1, 1986, as the disability suffered by him was not attributed to military service. Being aggrieved by the impugned order, Annexure P-1, rejecting his request for grant of disability pension, he made representation dated January 31, 1987 (Annexure P-2) to the Army Headquarter, New Delhi, stating therein that while he joined the Indian Army in the year 1972, his eye vision was perfect (6/6). While serving the Army, he had to undergo one eye operation on August 29, 1976. He was downgraded to medical category BEE (P) due to the said eye operation. He kept on getting advice from the medical experts in the Army and after some time, he was again downgraded to medical category CEE (P) in December 1979. It was mentioned by him in the representation aforesaid that Military Hospital AKHNUR recommended his disability pension at 40% and all necessary documents regarding pension were also sent to the Record Sikh Regiment for further action. Ultimately, he was discharged from Army on January 9, 1987. *Vide* letter dated February 11, 1987, the Record Officer for Officer Incharge Record, Sikh Regiment Abhilekh Karyalaya Record, the Sikh Regiment, Ramgarh Cantt., sent his appeal dated January 31, 1987 against rejection of disability pension to the CDA

(P) G-III Section, Allahabad. When, however, his aforesaid representation said to have been forwarded to the concerned authorities by treating it as an appeal brought no tangible result, he filed writ petition with the result already indicated above.

(3) The respondent–Union of India (hereinafter referred to as 'appellant') entered defence and hotly contested the cause of the petitioner and in the written statement filed on its behalf, it was pleaded that there was no record that the petitioner was injured by hand grenade. No injury report was even prepared by the unit. However, as per service details, the petitioner was admitted to Military Hospital Meerut Cantt. on July 20, 1976 and was discharged therefrom on July 31, 1976 with diagnosis Cataract (Lt.) eye. At the time of admission in Military Hospital Meerut Cantt., the individual had complained that about one month back, he noticed diminished vision in left eye but since then it has gradually progressed. It was further pleaded that there was no history of pain, redness or trecome at on set. He was downgraded in medical category CEE temporary for six months. He was downgraded in medical category BEE (P) by a medical board held on July 22, 1981 with diagnose APHAKIA (LEFT) eye, which was viewed as neither attributable to nor aggravated by service. It was further pleaded that the petitioner never reported to the Subedar or the Captain, as stated by him in the petition. His claim for disability pension having been rejected was admitted but it was further pleaded that the rejection was based on the attributability aspect of the disability keeping in view all medical documents of the petitioner and that the petitioner was informed of the decision of the Controller of Defence Accounts (Pension) *vide* letter dated November 6, 1986. He was also advised to prefer an appeal against the decision of the Controller of Defence Accounts (Pension), if he so desired. He preferred an appeal dated January 31, 1987, which was forwarded to the Controller of Defence Accounts (Pension) *vide* Records Sikh Regiment Letter dated February 11, 1987 under intimation to the petitioner. His appeal was also rejected by the Government of India, Ministry of Defence on May 27, 1987 and decision thereof too was communicated to the petitioner. It was admitted that the petitioner did file representation. It was further pleaded that the petitioner was discharged from the Army on February 28, 1987 and his name was struck off with effect from March 1, 1987 under Army Rule 13(3) Item III (i) on fulfilling the conditions

of his enrolment after completing 15 years and 22 days' service. The extent of disability at 40% for two years by the release medical board has since been admitted but grant of disability pension is sought to be denied as the disability was neither attributable to nor aggravated by military service.

(4) On the pleadings of the parties, as extracted above, learned Single Judge observed as follows :—

> "In the written statement filed on behalf of the respondents, it has been *inter alia* averred that there is no record that the petitioner was injured by any grenade. It is pointed out that no injury report was even prepared by the Unit. The factum of his admission in the Military Hospital on July 20, 1976 and discharge from there on July 31, 1976 with diagnosis Cataract (Lt) eye, has been admitted. Further more, the factum of the petitioner's having suffered disability which was assessed at 40% has not been disputed. It has, however, been averred that the claim of the petitioner for the grant of disability pension was rejected on the ground that the disability was not attributable to Army service. It has been further pointed out that there is no direct or circumstantial evidence in favour of the petitioner."

(5) Taking into consideration Regulation 173 of the Pension Regulations, 1961 and relevant entry 7(b) in Appendix II, it was further observed as follows :—

> "A perusal of the above clause 7(b) shows that if no note of any disability has been made at the time of a person's entry into service, it is presumed to be attributable to the army service. Admittedly the petitioner's vision at the time of his enrolment in February 1972, was 6/6. In 1976 his disability was assessed at 40%. It has not been shown that the disability has since disappeared. Since the disability continues to be over 40%, the petitioner was entitled to the grant of disability pension. The action of the respondents in declining his claim

was, in my view contrary to the provisions of regulation 173 and para 7(b) as noticed above."

(6) Mr. Gurpreet Singh, learned counsel representing the appellant, vehemently contends that claim of the petitioner has been allowed on the basis of Regulation 173 of the Pension Regulations, 1961 and Entry 7(b) of Appendix II as on the basis thereof an opinion has been formed that the disability suffered by the petitioner was on account of Military service rendered by him or aggravated by the said service. While so doing, neither the pleadings reflected in the written statement nor the medical records of the petitioner were taken into consideration. It is further the contention of learned counsel that Entry 7(b) of Appendix III was not at all applicable to the facts of this case, as the petitioner was not discharged from Army on account of his weak vision of left eye and further that the said injury as per the records could not be attributable to or aggravated on account of Military service rendered by the petitioner. Mr. Gurnam Singh, learned counsel representing the petitioner has endeavour to support the judgment of the learned Single Judge on the grounds mentioned in the judgment itself.

(7) We have heard the learned counsel representing the parties and with their assistance have also gone through the records of the case as also the other medical records of the petitioner so specifically sent for.

(8) Grant of disability pension, concededly, is governed by the Army Regulations. Regulations 48, 173, 178 and 179, which are relevant for the purpose of deciding the controversy in hand, are reproduced below :—

"48. (a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 per cent or more.

(b) the question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II."

"173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.

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

"178. An individual who is retired/discharged from service, otherwise than at his own request, with a pension or gratuity, but who, within a period of ten years from the date of retirement/discharge, is found tc be suffering from a disease which is accepted as attributable to his military service may, at the discretion of the competent authority, be granted, in addition to his pension/ gratuity, a disability element at the rate appropriate to the accepted degree of disablement and the rank last held, with effect from such date as may be decided upon in the circumstances of the case."

"179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 per cent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease."

(9) Perusal of regulations, reproduced above, would show that disability pension consists of two elements, namely, service and disability. Both these elements, i.e., service and disability, have to be granted to an officer, who is invalided out of service on account of disability, which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or more. As to whether disability is attributable to or aggravated by military service or not, shall be determined under the rules in Appendix II. In the case of individual, i.e., other than officers, disability pension, it appears, is governed by Regulation 173. This regulation is similarly worded as Regulation 48 with the only difference that whereas Regulation 48 deals with both the service and disability elements, there is no specific mention of these two different elements in Regulation 173. That may, however, make no difference in entitlement of individual to have both the elements, as would be clear from Regulations 178 and 179. From the reading of the regulations, mentioned above, and in particular Regulation 179, it would be made out that an individual, who retires or is discharged even on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years and is found suffering from disability attributable to or aggravated by military service, shall be deemed to have been invalided out of service and is entitled to disability pension from the date of retirement, if the accepted degree of disability is 20% or more. He is also entitled to service element if the degree of disability is less than 20%. As mentioned above, as to whether a person, who retires or is discharged on completion of tenure or on superannuation would make no difference in entitling the individual for earning disability pension if the disability is attributable to or aggravated by military service. What really entitles an individual to earn disability pension is disability attributable to or aggravated by military service as in that event, he is deemed to have been invalided out of service.

(10) The crucial question in the present case is thus, as to whether disability, from which the petitioner suffered, was attributable to or aggravated by military service. If a finding is to be returned in favour of the petitioner that the injury or disability caused to him is attributable to or aggravated by military service, the defence projected by the appellant that the petitioner was boarded out from service on completion of tenure of 15 years would make no difference. The petitioner in the event aforesaid shall be deemed to have been invalided out of service. To find out the cause of injury, as mentioned above, we sent for original records. The same have been made available to us. Perusal of the records would clearly demonstrate that the story coined by the petitioner with regard to explosion of hand grenade, thus, resulting into loss of eye sight is made up affair. It is totally falsified from the records of the case. Available on records are the proceedings when the petitioner was brought before the Medical Board. Proforma in Part-I has since been filled in by the petitioner himself. In the column of giving details on the question as to how during service of an individual and as per the showing of individual himself the injury was caused or made his disability worse, all that the petitioner has mentioned is 'No'. In the next column dealing with as to how the wound or injury occurred and as to whether any medical enquiry was held and injury report submitted, the petitioner has mentioned NA (Not Applicable). Surely, if it was the case of the petitioner that he had suffered injury in the left eye on account of explosion of grenade in the training session, reference thereof would have certainly been made in the columns, referred to above, in the proforma that was filled in by him at the time when he was brought before the Release Medical Board. In Part-III of the proforma, Release Medical Board, has clearly mentioned that the disease of the petitioner was constitutional and not connected with service. It is significant to note that the petitioner was released from service in medical category BEE (P). The history of the petitioner, when he was admitted in the hospital for operation further reveals that the petitioner was received as a patient from 165 MH as an old case of Cataract left eye in low medical category CEE with effect from July 1976. There is no mention in the aforesaid history that cause of injury or disability was explosion of hand grenade or any incident that might have led to the same. In view of the availability of medical records, mention whereof has been made above, there is no need to go into the question that Cataract

normally would not be result of strain and stress that one has to go through when in service of the armed forces. Records of the case made available to us manifest beyond doubt that the petitioner was discharged from Military service on completion of tenure of his engagement and the injury or disability suffered by him was neither attributable to nor aggravated by Military service. In this situation, the petitioner cannot be deemed to have been invalided from service in view of Regulation 179, reproduced above.

(11) Mr. Gurnam Singh, learned counsel representing the petitioner, however, relies upon judgment of Hon'ble Supreme Court in ***Joginder Singh (Lance Dafadar)*** **versus** ***Union of India and others (1).*** The judgment of Supreme Court in Joginder Singh's case *(supra)* has no parity on facts with the case in hand. Joginder Singh was serving in regular Army. He had served for more than 17 years as a Combatant Soldier and had served in the operational area during the 1965 and 1971 Indo-Pak wars. On 14th February, 1976 he was proceedings on casual leave from Babina, his duty station, to his home in district Faridkot. While boarding the train at Babina Railway Station, he got involved in an unfortunate accident as a result of which he fell down from the train and suffered severe injuries. On the facts, mentioned above, it was held by the Supreme Court that the petitioner should be treated as on duty even when he was on casual leave.

(12) The contention of Mr. Gurnam Singh based upon Entry 7(b) of Appendix II has also no substance as the said entry would be applicable only if discharge of the individual is on account of disease or disability.

(13) In view of the discussion made above, we are of the view that the judgment rendered by the learned Single Judge cannot possibly be sustained, as the petitioner was clearly not entitled to disability pension. This appeal is, thus, allowed. Consequently, the writ petition is dismissed, leaving, however, the parties to bear their own costs.

R.N.R.

(1) 1996 (2) SLR 149