

Pinki Devi Vs. Union of India

Pinki Devi Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/701771

Court : Delhi

Decided On : Sep-04-1996

Reported in : 1998(44)DRJ189

Judge : Usha Mehra, J.

Acts : [Constitution of India](#) - Article 226; Pension Regulations for the Army, 1961 - Regulation 173

Appeal No. : Civil Writ Petition No. 3413 of 1996

Appellant : Pinki Devi

Respondent : Union of India

Advocate for Pet/Ap. : R.P. Sharma and; Jyoti Singh, Advs

Judgement :

Usha Mehra, J.

(1) RULE.

(2) Husband of the petitioner joined, Indian Army as Sepoy after he was declared medically fit in all respects. He was posted at Kashmir Boarder in the Year 1984-86. There he performed his duties to the satisfaction of the respondent. In 1986-87 he was transferred to Bareilly. During the period from November, 1983 till October,

1987 petitioner's husband did not suffer from any disability nor fell sick nor he was admitted to any military hospital. In November 1987 Petitioner's husband was sent to Sri Lanka as part of Indian Peace Keeping Force (in short IPKF). At the time of sending him to jana at Sri Lanka he was medically examined. The Medical Board declared him fit in all respects to carry out arduous duties at jana in Sri Lanka.

(3) While being part of IPKF on 22nd February, 1988, the petitioner's husband fell sick. He was admitted in a local hospital. Thereafter he was shifted to Military Hospital at Madras. The said hospital in turn shifted the deceased to Military Hospital at Secunderabad (A.P.) on 20th March, 1988. On 11th April, 1988, the petitioner's husband was shifted to Poona where medical treatment by the hospital authorities at Poona was given till 22nd May, 1988. On 23rd May, 1988 the deceased was shifted back to Military Hospital at Secunderabad. The Medical Board at Secunderabad declared him unfit for retention in Army. His disability was assessed but it was stated that it was not attributable to military service. The Medical Board opinion was not supplied to deceased husband of the petitioner, hence he could not contest the finding of the said Medical Board during his life time. Deceased husband of the petitioner, however, submitted an appeal in August, 1988 to the competent authority for the grant of disability pension. The same was rejected. On 15th January, 1993 the husband of the petitioner died leaving behind the petitioner and three minor children. The petitioner, approached the competent authority for disability pension. Her appeal has also been rejected, hence this present petition.

(4) This petition has been contested by the respondent primarily on the ground that disability of the husband of the petitioner was neither attributable to service nor aggravated due to service. The disability i.e. 'poly-cystic liver' disease being congenital could not be attributed to service nor it could have aggravated on account of service. That the Medical Board which examined the deceased assessed the disability at 20% but opined that it was not attributable to service, hence the claim of the petitioner was rightly rejected.

(5) I have heard counsel for the parties and perused the record, Pension Regulations for the Army are declared to be statutory. Grant of disability pension is

covered under Regulation 173 which reads as under:

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

(6) Admittedly the deceased was invalided from service on account of the disability which was assessed at 20%. The only reason given for rejection of his claim was that the disability was neither attributable nor aggravated by Military Service.

(7) The question whether the disability could be attributable or aggravated by military service normally is to be determined by the opinion of the Medical Board. For a disability to be attributable to service it has to have a connection with military service of the individual. Similarly, if the disease is aggravated it has to have a casual connection with the military service of the individual. In order to appreciate whether the disease suffered by the deceased had any casual connection with his military service, we may have a glance to the medical opinions on the point and also the medical history of the deceased.

(8) That the husband of the petitioner was posted in terrain of Jammu & Kashmir. He served in the operational area as well as in peace area without any medical problem. Before sending him to Sri Lanka with the I.P.K.F. at jana he was medically examined. The Medical Board did not find any medical history or disease from which the deceased could be suffering. The deceased was declared medically fit. It was at jana that he suffered poly-cystic liver disease. The contention of respondent that this disease was congenital, and therefore, had no casual connection with military service, to my mind, this argument is without substance. The posting of the deceased at jana was after thorough medical examination. And even if the deceased had this disease it got aggravate when he was posted at jana. The duties of the deceased at jana could not be but arduous and the atmosphere could not be called but hostile. The husband of the petitioner had been posted and served in J & K, operation area as well as high attitude but never suffered this disease. It was at jana that the developed this disease or it got aggravated. The reason for aggravation of this disease could be many and few

amongst those could be arduous work and hostile atmosphere at jana. The petitioner has placed on record medical opinion based on medical books. That shows that poly-cystic liver disease though congenital in nature yet the symptoms of the same can manifest at any time. A person suffering from this disease is not suppose to perform strenuous and arduous work. Admittedly, the deceased who remained posted for two years in Kashmir Valley in the high altitude terrain did not suffer from consequential symptoms of poly-cystic disease. It was only when he was posted at jana in Sri Lanka that symptom manifested. thereforee, it has to have casual connection with his posting at jana in Sri Lanka i.e. his military service or the same got aggravated here. The medical books opine that strenuous physical work, environmental pollution and exposure to common infection can lead to aggravation of this disease. These factors can complicate the disease which may become fatal as in this case. Hence it cannot be ruled out that husband of the petitioner on account of strenuous physical work and exposure to common infection and due to polluted environment in jana might have suffered this disease or it got aggravated which ultimately killed him on 15th January, 1993. Para 5(a) of Appendix li to Rule 173 of the Pension Regulations for the Army, 1961, prescribes that a member of the Army is presumed to be in sound medical and physical condition at the time of entering military service unless a note is recorded at that time that he has been suffering from such a disease. In the present case it has been admitted by the respondent that no disability note was recorded in the personal file of the deceased at the time he entered the Military service. Similarly, at the time of his invalidation from service on medical ground, the health of petitioner's husband deteriorated on account of the disease which got or which aggravated on account his military service which he rendered at jana in hostile atmosphere. The reading of Rule 173 leads to only one conclusion that the deceased had not suffered from any disability at the time of entering the military service nor when he was posted at J & K or in high altitudes. The congenital disease he got at jana or which got aggravated because of arduous work and polluted atmosphere or due to infection which might have had a direct connection with his posting at jana. thereforee, the respondent cannot shirk its responsibility to pay disability pension to the widow of the deceased and his family. The disease either got aggravated or his conditions got deteriorated because of the

atmosphere prevailing at jana. The deceased got infected with this disease at jana. In similar circumstances this court in the cases Sunderpal Singh v. Uoi reported in 1991 (5) Slr 459, Bodanlal Yadav v. Uoi, reported in 1992 (3) Slr 758, Vishwanath v. Uoi reported in 1991 (5) Slr 476 and Roshan Lal v. Uoi, reported in 1992(3) Slr 662, ordered for the grant of disability pension to the family of the deceased.

(9) In view of the circumstances explained above coupled with the fact that Commanding Officer of the deceased after sanctioning the disability pension recommended the case to coda (P). Allahabad. But the coda (P) Allahabad on the alleged ground that the disease was not attributable to military service rejected the same. Now in view of the facts and medical opinion described above it can be said the deceased was entitled to disability pension. He suffered from the disease even though congenital in nature because of being posted at jana in a hostile atmosphere where he had to have strenuous physical work and exposed to common infection. His posting at jana might have aggravated his disease. Hence it is ordered that husband of the petitioner was entitled to disability pension from the date he was invalided. The respondent is accordingly directed to grant disability pension in favor of the deceased and pay the same to deceased's legal heirs as per rules.

(10) With these observations the petition stands disposed. Rule is made absolute with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com