

Deepak Kumar Singh Vs. Union of India

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Court : Delhi

Decided On : Aug-22-1997

Reported in : 1997VIAD(Delhi)185; 68(1997)DLT788; 1997(43)DRJ4

Judge : Devinder Gupta and; K. Ramamoorthy, JJ.

Acts : [Constitution of India](#) - Article 226; ;Air Force Act, 1961; Air Force Rules - Rule 7b

Appeal No. : Civil Writ Appeal No. 3683 of 1995

Appellant : Deepak Kumar Singh

Respondent : Union of India

Advocate for Pet/Ap. : N. Kinara and; B. Babbar, Advs

Judgement :

Devinder Gupta, J.

(1) The petitioner has sought the quashing of order of discharge dated 3.12.1993 with direction to the respondents to reinstate him with full back wages and all consequential benefits. In the alternative, the petitioner has prayed for issuance of a writ of mandamus directing the respondents to award disability medical pension to him

(2) The petitioner was enrolled in the Indian Air Force on 22.3.1991 as Airman in the Trade - 'Photo Technician'. According to the petitioner, a board of Medical Officers, which conducted medical examination before his entry to the Air Force declared him fit in all respects and made no note of any disease or disability in the documents of his enrolment. In November, 1992, the petitioner completed initial training and was qualified as Aircraftsman and was posted in No.2 Sqn.Air Force. In May, 1993 he was sent on posting to E & I.T.I., Jalahalli East, Bangalore for conversion course from Photo Technician to Photo Filter Trade. It is further stated that on 23.7.1993 routine vaccines of Tab and Cholera administered to the petitioner at Station Sick Quarters, Jalahalli East, Bangalore. Such vaccines are administered in routine medical course. The petitioner developed fever and headache and frequent urination where after he started feeling weakness. On 2.8.1993 the petitioner's blood and sugar tests were conducted, which revealed that his urine had sugar contents. In Station Sick Quarters, he was given Glucose Saline without pre- diabetic precautions, which caused Diabetic Keto Acidosis and the petitioner went in Coma. He was sent to Command Hospital A.F.Bangalore and was kept there for three months under treatment. As a result of further medical check up, the petitioner was declared a patient of Diabetic Mellitus (IDDM) 250 and was placed in Category Eee (Permanent) with 40% disability. Relying upon the medical opinion, the petitioner was invalided out of service. His claim for medical pension was also turned down by the Controller of defense Accounts (P) Allahabad. Appeal was also preferred but of no avail.

(3) The petitioner has challenged the order of discharge and non-grant of disability pension on the ground that discharge is illegal, unwarranted and is in violation of Articles 14 and 16 of the [Constitution of India](#). Before enrollment, he was examined by a Board of Doctors, who had declared him fit. He became a victim of wrong treatment given at Station Sick Quarters and Command Hospital, Bangalore. Opinion of Medical Board at Command Hospital is wrong and is based upon wrong diagnosis. Because of the opinion of the Medical Board he was invalided out. The discharge based upon such wrong medical opinion is illegal. Though the percentage of disability was found to be 40% for 2 years, yet CCD(P), Allahabad, in an arbitrary manner, took a decision not to grant medical pension.

(4) The respondents in reply filed on the affidavit of Group Captain V.Pradhan, Officer in Charge, Legal Cell, Air Force Record Office, New Delhi have stated that the petitioner was discharged from service on being found unfit for further service in Air Force being a case Diabetes Mellitus (IDDM) 250. The Medical Board recommended 40% disability for two years at the time of discharge. He had put in a total of two years and 255 days. The case for grant of disability pension was taken up with the Chief Controller of defense Accounts (Pension), Allahabad for adjudication of disability pension. Through letter dated 16.11.1994 a decision was taken by CCDA(P) Allahabad that the petitioner's disability, from which he suffered during service, is neither attributable to, nor aggravated by Air Force Service. As such the claim for disability pension was rejected. Decision was conveyed to the petitioner through letter dated 13.12.1994 with an advise to prefer an appeal but no appeal was preferred. On rejection of disability pension, the petitioner was granted invalid gratuity of Rs.3,000.00 and a sum of Rs.33,000.00 towards A.F.Group Insurance Scheme only.

(5) It is also stated that upon completion of training, the petitioner was posted to 25 Squadron, Air Force where after he was posted to E&ITI, Air force w.e.f. 17.2.1993 for undergoing conversion course. Respondents have not denied that routine vaccination /inoculation along with others was done on petitioner, which is a periodical feature and is administered to all Airmen. No other airman developed weakness or frequent urination, which are symptom of diabetes. Glucose Saline was administered to the petitioner. The respondents, however, explained that in unknown cases of diabetes, pre-Diabetic check up cannot be undertaken in Station Sick Quarters. However, as an immediate requirement, Iv fluid is given to keep patient alive and to treat him when required. Due to the petitioner's condition, which was serious at that time, he was rightly transferred to Command Hospital. The petitioner needed treatment in hospital as he had Diabetic Keto Acidosis and was in coma. He was placed in dangerous ill list and his relatives were also called. He was duly treated.

(6) It is further stated that cases of diabetes mellitus occurring at a young age and requiring insulin therapy are dealt with according to existing rules on the subject in the Air Force. Such patients are invalided and medically boarded out of service by

a duly constituted Invaliding Medical Board. In the instant case, on 3.11.1993, Classified Specialist (Medicine and Nephrology) opined that the petitioner was a case of insulin dependent diabetes mellitus with Keto acidosis and recommended him to be invalided out of service in medical category Eee (Unfit for further Air Force Service) and, accordingly, the petitioner was brought before a duly constituted Invaliding Medical Board on 10.11.1993 at Command Hospital, Air Force, Bangalore. The said medical board assessed 40% disability for two years.

(7) We have heard learned counsel for the parties. The very fact that the petitioner was examined by a Medical Board, which gave an opinion that he was not medically fit for further service in Air Force because of the disease, as noticed above, which opinion has not been rebutted by the petitioner makes it a case for no interference with the order of discharge. The order of discharge is based upon the opinion of the Medical Board, which also assessed disability to the extent of 40%. As such it cannot be said that the order of discharge is arbitrary or is not based upon material. Invaliding proceedings were duly considered by the Competent Authority on 3.12.1993 and relying thereupon the petitioner was invalided out from service w.e.f. 31.12.1993, as is reflected from the certificate dated 10.11.1993 issued to the petitioner.

(8) The question to be examined now is about the petitioner's entitlement to disability pension, which claim was turned down by the Chief Controller of defense Accounts Pension, Allahabad. It has not been disputed by the respondents that at the time of enrolment no mention was made on the petitioner's service record that he was suffering from any ailment much less the disease in question, which resulted in the petitioner's discharge. It is also not disputed, rather it is stated in reply that 'the Medical Board recommended 40% disability for two years at the time of discharge.' Based upon this opinion of the Medical Board, the petitioner was discharged. Claim for medical pension on being referred to the Chief Controller of defense Accounts, Pension, Allahabad was negated on the ground that the disability which the petitioner suffered during his service in the Indian Air Force is found neither attributable to, nor aggravated by Air Force Service.

(9) Needless to add that the question whether disability is attributable to or aggravated by Air Force Service is, as per the Pension Regulations for Indian Air Force, 1961, is required to be determined under the Rules, which are annexed to Regulation as Appendix-II. Rule 7-B thereof says:-

'A disease which has led an individual discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for the Air Force Service. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination, prior to acceptance for service, the disease will not be deemed to have arisen during service.'

(10) Admittedly no note of the disease was made at the time of petitioner's enrolment. The Medical Board had also in its opinion not recorded any reason that the disease suffered by the petitioner could not have been detected on medical examination prior to the petitioner's acceptance for service. Thus in view of Para 7 of the Entitlement Rules, the disease, which led to the petitioner's discharge will be deemed to have arisen during Air Force Service and it is also not disputed that during the entire service of more than 2 years the petitioner was not hospitalised or treated for the said disease except, after he was administered the vaccine. In view of the ratio of the decision of the Supreme Court in Ex.Sapper Mohinder Singh v. Union of India (CA.No.164 of 1993 decided on 14.1.1993) Chief Controller of defense Accounts (P), Allahabad, in the absence of any other medical opinion could not have ruled out or ignored the opinion of the Medical Board upon whose opinion the petitioner was invalidated out. The said Board recommended 40% disability for two years. In these circumstances, the decision of the respondents not to grant disability pension to the petitioner being arbitrary is unsustainable and is liable to be set aside.

(11) Consequently, the writ petition is allowed. Respondents are directed to sanction/ grant disability pension to the petitioner as per the recommendation of the Medical Board treating the disability at 40% for two years. The same will be continued to be paid till the disability is varied on re-assessment by a properly constituted Medical Board. Arrears will be worked out and paid within four months.

The petitioner will also be entitled to costs of the petition quantified at Rs.3,000.00

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