Sunil Kumar Sharma Vs. Union of India & Ors

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Court : Delhi

Decided On : Nov-12-2014

Judge : Kailash Gambhir

Appellant : Sunil Kumar Sharma

Respondent : Union of India & Ors

Judgement :

$~9 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of hearing and Order:

12. h November 2014 + W.P.(C) 4564/2013 SUNIL KUMAR SHARMA Through: ..... Petitioner Mr. Sarvesh Biswas, Advocate versus UNION OF INDIA & ORS Through: ..... Respondent Mr. Ankur Chhibber, Advocate CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% KAILASH GAMBHIR, J.

(Oral) 1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks the issuance of a writ of certiorari against the final judgment and order dated 8.2.2010 passed by the learned Armed Force Tribunal, New Delhi passed in T.A. No.318/2010.

2. The limited issue raised by the petitioner in the present petition under Article 226 of the Constitution of India is that the respondents have failed to accede to his request for grant of disability pension. The learned counsel for the petitioner states that the petitioner is entitled to the grant of disability pension as on the date of his medical examination, while entering into the Army, he was not found suffering from any disease much less the disease due to which he had been disallowed the disability pension. The learned counsel for the petitioner also submits that the petitioner was discharged from the Army on 18th April 1984 and he was not given an appointment and through constant correspondence with the Record Office, the petitioner was informed that since his disability was not attributable to the military service therefore he was not given any pension. Thereafter, the petitioner filed a Writ Petition being No.1266 of 2006 before this Court and vide order dated 30th April 2008, directed the respondents to hold an appeal Medical Board.

3. The case of the petitioner is that he was brought before the properly constituted Medical Board which is the recommending authority as per Entitlement Rule 17 of 1983 and it placed the petitioner in a low medical category EEE by assessing his disability @ 20%. The petitioner was diagnosed as a case of neurosis.

4. The learned counsel for the petitioner placed reliance on the judgment of the Apex Court in Civil Appeal No.4949/2013 the case of Dharamvir Singh v. Union of India and Ors. (2013) 7 SCC316 wherein also the Honble Supreme Court took a view that a member is presumed to be in a sound physical & mental condition upon entering service if there is no note at the time of entrance, that he is suffering from any kind of medical disease and in the event of subsequently being discharged on medical ground such a medical condition is to be presumed to be attributable to or aggravated by military service.

5. Controverting the submissions made by the learned counsel for the petitioner, one of the contentions raised by Mr. Ankur Chhibber, Advocate appearing on behalf of the Respondents is that the petitioner was inducted to undertake the training on 26th March 1983 and he was hospitalised for medical treatment on 16th November 1983 and in the summary sheet, petitioner himself had taken a stand that he was feeling home sick and wanted leave from his service. The

learned counsel for the respondent, thus submits that the ratio of Dharamvir Singh (supra) will not be applicable to the case of the petitioner.

6. We have heard the submissions of learned counsel for the parties and also gone through the judgments relied upon by the parties.

7. It is not in dispute between the parties that at the time of entering into the service, the petitioner was not suffering from any disease much less the said disease due to which he was ultimately discharged. Without carrying out the discussion any further, we are of the view that the issue in hand has been authoritatively decided by the Supreme Court in Dharamvir Singh v. Union of India and Ors. (2013) 7 SCC316and the following paras of the said judgment would be of significance:

28. A conjoint reading of various provisions, reproduced above, makes it clear that: (i) Disability pension to be granted to an individual who is invalidated 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 or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173). (ii) 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 r/w Rule 14(b)].. (iii) 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). (iv) 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)].. (v) 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. [14(b)]..

(vi) 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. [14(b)].; and (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002-"Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above.

29. We, accordingly, answer both the questions in affirmative in favour of the Appellant and against the Respondents.

30. In the present case it is undisputed that no note of any disease has been recorded at the time of Appellant's acceptance for military service. The Respondents have failed to bring on record any document to suggest that the Appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of Appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows: (d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof. YES Disability is not related to mil service

8. The medical report which has been placed on record by the respondent is an opinion given by the Medical Officer taking a view that the petitioner was a case of neurosis and the said disability is not attributable to and aggravated by the military service. We find that the said Medical Officer has not given any reasons as to how the said disability could not be held to be attributable to and aggravated by military service, considering the fact that there was no note of any kind of such disability at

the time of his entering into the Army. Nor is there any opinion, explanation or reason of the Medical Board justifying their stand in terms of para 28(vi) of Dharamvir Singh(supra). The denial of the disability pension would therefore be without any reasons, which is unsustainable in law.

9. In view of the aforesaid discussion, we find merit in the submissions made by the learned counsel for the petitioner concerning the relief sought for grant of disability pension, in the light of the judgment of the Honble Supreme Court in Dharamvir Singh(supra). Accordingly, the impugned order 8.2.2010, passed by the learned Armed Force Tribunal is set aside and accordingly we direct the respondents to grant disability pension to the petitioner within a period of six weeks from the date of this order.

10. With aforesaid directions, the present petition stands disposed off. KAILASH GAMBHIR, J NAJMI WAZIRI, J NOVEMBER12 2014 pkb