Union Of India & Anr vs Shri Baljit Singh on 11 October, 1996

Equivalent citations: AIRONLINE 1996 SC 400, 1996 (11) SCC 315, 1997 SCC (L&S) 476, (1997) 1 CUR LR 24, (1997) 1 SCT 386, (1997) 1 SERV LJ 147, (1997) 1 SERV LR 98

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
SHRI BALJIT SINGH

DATE OF JUDGMENT: 11/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Delay condoned.

Leave granted.

We have heard learned counsel on both sides. The respondent was enrolled in the Army as Apprentice on March 30, 1975 and was appointed in the service on regular basis w.e.f. March 27,1977 in the EME 177 Battalion. While he was in service he had sustained moderately severe injury Abductor Strain [R] Thigh internal Derangement [R] Knee on April 17, 1979 and was admitted to Military Hospital, Babina where he was downgraded to medical category CEE [temporary] w.e.f. August 11, 1979, by a duly constituted Medical Board of doctors. He was discharged from the Military Hospital, Babina on August 12, 1979. On May 10, 1981, the Medical Board of doctors found

him physically incapacitated and reported in February 1980 in Psychiatric OPD where he was diagnosed to have a "Neurosis Superimposed on an immature histrionic persouabity". He was recommended to be invalidated out of service. He was discharged from service by consent as an invalidated man on May 31, 1981. He filed W.P.No.738 of 1995 in the High Court of Himachal Pradesh at Shimla and in the impugned judgment dated October 31, 1995, the High Court directed the appellants to pay him disability pension.. Thus this appeal by special leave.

Shri P.P. Malhotra, learned senior counsel appearing for the appellants, contended that under Rule 173 of the primary conditions for grant of disability pension, as per the Pension Regulations of the Army, 1961, [for short, the "Pension Regulations], unless otherwise specifically provided, a disability from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over. In this case, after examination of the respondent by the Board of Doctors, as per Col. 2 [iii] it was reported that the injury was not connected with the service and as a result he cannot be declared to have suffered injury due to the service. Mr. Naresh K. Sharma, learned counsel for the respondent, contends that the respondent had joined the service and while he was in service, he sustained injury and that, therefore, he is entitled to disability pension. He places reliance on para 2 [ii] of the Entitlement Rules, [Appendix II at page 53 of the paper book]. At page 55, Col. [ii] indicates that the disablement is due to a wound, injury or disease which [i] is attributable to military service; or [ii] existed before or arose during military service and has been and remains aggravated thereby;

He further contends that as per the medical report the injury was sustained by him while he was in service and that, therefore, it has been presumed that it was during service and accordingly must bee attributable to military service. On a consideration of the rules, we think that the contention of Shri Malhotra merits acceptance. It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from clauses [a] to [d] of paragraph 7 which contemplates that in respect of a disease the Rules enumerated thereunder require to be observed. C1. [c] provides that if a disease is accepted as having arisen in service, it must also be established or contributed the onset of the disease and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was to military service or was aggravated which contributed to invalidation for the military service. Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion. However, having regard to the facts and circumstances of this case, we do not think that it is an appropriate case for interference.

The appeal is accordingly dismissed with the above findings. No costs.