Supreme Court of India
Sukhvinder Singh vs Union Of India & Ors on 25 June, 1947
Bench: Vikramajit Sen, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5605 OF 2010

SUKHVINDER SINGH .….APPELLANT

Versus

UNION OF INDIA & ORS. ….RESPONDENT

O R D E R

1 This Appeal assails the Order passed by the Division Bench of the High Court of Delhi at New Delhi dated March 30, 2006 whereby WP(C) No.3923 of 2005 came to be dismissed. The prayer in the Writ Petition, inter alia, was for the issuance of a writ directing the respondents to release

(a) disability pension in favour of the Petitioner if disability is twenty per cent and above, (b) the service element of pension in favour of the Petitioner and (c) to re-enrol the Petitioner if his disability is found less than twenty per cent.

2 Succinctly stated, the facts germane for deciding the present Appeal are that consequent to the Primary Medical Examination for Recruitment having been conducted vis-a-vis the Appellant/Petitioner on 22nd December, 2000, he was enrolled in the Indian Army as a Combatant Soldier on 15th March, 2001. It bears noting that Rule 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982, provides that (a) “a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance (b) in the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.” Even though this provision postulates a ‘casualty’ we find no logical reason not to extrapolate it to even simple injuries or disabilities. Therefore, it would be fair to assume that on the date of his recruitment the Appellant was in a sound health; no hearing impairment had been detected at that stage, no adverse noting had been made in the Medical Entry Form viz. AFMSF-2 for existence of any disease at the time of enrolment. This was after the Appellant had been examined physically and medically as contemplated by Regulation 383 which reads thus:- “383.Responsibility of Recruiting and Medical Officers Recruiting officers are responsible for the measurements, apparent age, intelligence and mental suitability of the candidates selected by him. Medical Officers are responsible for the health, physical fitness for service, likely extent of development and identification marks.” 3 We are not a little surprised that although the Rules or Regulations (Chapter VII of the Regulations for the

Medical Services of the Armed Forces, 1983) specifically postulate the formation of Invalidation Medical Boards, they do not set out the medical parameters justifying or requiring serviceman/officer to be removed from service. This feature renders decisions taken by such Boards pregnable to assaults on the grounds of capriciousness or arbitrariness, and this is especially so where the extent of the disability is below twenty per cent. Can the Authorities be permitted to portray that whilst a person has so minor a disability as to disentitle him for compensation, yet suffers from a disability that is major or serious enough to snatch away his employment? This is especially so since Regulation 132 ordains that the "minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years." Moreover, in the case in hand, it appears that no efforts were undertaken by the Respondents to consider whether the Appellant could continue in service in a lower medical category.

4 According to the Appellant, on 5.8.2001 he was slapped on the ear by the Instructor in the Training Centre as a consequence of which he suffered shooting pain in that ear and was admitted to the Military Hospital, Kamptee. We have perused the Report of the Medical Officer (ENT), dated 5.8.2001 which has been filed with the Appeal as Annexure P-1. It contains a noting to the effect that the Appellant had stated that he was hit on the ear by a fellow patient in the ward. The diagnosis was that there was "Substandard hearing RT ear (old) c Tr perforation LT TM." It seems to us that the discrepancy in the noting as to the manner in which the injury was sustained was because it was inconceivable for a young recruit to lodge a complaint against his Instructor. Such a complaint would have had serious implications and an Inquiry under Regulation 520 of the Regulations of the Army, 1987 would have had to be carried out. 5 On 16.2.2002, the Appellant was presented before the Medical Board which recommended that the Appellant be invalided out of service with disability of 6 per cent to 10 per cent on account of hearing impairment. It will bear repetition that the exercise as to whether the Appellant could be retained in service in some other category was not even thought of or considered or undertaken, in the face of the Pension Regulation for the Army, 1961, Part I, Appendix II (4) and (9) which postulates that "the claimant shall not be called upon to prove the conditions of entitlement. He/she shall receive the benefit of any reasonable doubt. This benefit shall be given more liberally to the claimants in field/afloat service cases." In its letter dated 18th October, 2004 the respondents have recorded that the Invaliding Medical Board (IMB) had considered the Appellant's Invalided Disability (ID) and had concluded it to be:-

(i) as neither attributable nor aggravated by Military Service; and

(ii) as assessed the degree of disablement of the said disease at 6 to 10 per cent, permanently for life.

Inexplicably, but very significantly, it has also been recorded that the above disability had existed before entering service, but had remained undetected by the recruiting Medical Officer. It has further been conveyed to the Appellant by the said letter that as per Regulation 173 of the Pension Regulations for the Army 1961, Part-I, disability pension is granted to an individual on his invalidment from service only when his disability is viewed as attributable or aggravated by Military Service and is assessed at 20 per cent or above by the competent Medical Authority, and since neither of these two factors was present, the Appellant was not entitled to grant of disability pension in terms of the said Regulation. The said Regulation is reproduced below for ease of reference:- "173.

Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of 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.

173-A. Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative employment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note: The above provision shall also apply to individuals who are placed in a low medical category while on extended service and discharged on the account before the completion of the period of their extension. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II." 6 We think that it is beyond cavil that a combatant soldier is liable to be invalided out of service only if his disability is 20 per cent or above and there is a further finding that he cannot discharge duties even after being placed in a lower medical category. We are indeed satisfied to note that Rule 173 Appendix-II (10) postulates and permits preferment of claims even "where a disease did not actually lead to the member's discharge from service but arose within ten years thereafter." We, just as every other citizen of India, would be extremely disturbed if the Authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. Learned Counsel for the respondents has failed to disclose any provision empowering the invaliding out of service of any person whose disability is below 20 per cent. Indeed, this would tantamount to dismissal of a member of the Armed Forces without recourse to a court-martial which would automatically entitle him to reinstatement. Regulation 143 envisages the 'Re-Enrolment of Ex-Servicemen Medically Boarded Out', where the disability is reassessed to be below 20 per cent. It is, therefore, self contradictory to contend that the invaliding out of service of the Appellant was justified despite his disability being of trivial proportions having been adjudged between 6 to 10 per cent only. We shall presume, albeit fortuitously for the Respondents, that re-assessment of the Appellant's disability was not required to be performed because it was found to be permanent. Otherwise, there would be a facial non-compliance with Regulation 143, which is extracted below for ease of reference:-

"143.Re-Enrolment of Ex-Servicemen Medically Boarded Out._(a)Ex-Servicemen, who are in receipt of disability pension, will not be accepted for re- enrolment in the Army.

(b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-enrolment, either in combatant or non-combatant (enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman applies for re-enrolment and claims that he is entirely free from the disability for which invalided, he will be medically examined by the Rtg MO and if he

considers him fit, the applicant will be advised to apply to officer-in- charge, Records Office concerned, through the recruiting officer for getting himself re-medically boarded. The officer-in-charge, Records Office concerned, on receipt of the application, will arrange for his medical examination at a Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including that on accommodation and journey to and from the place of medical examination.

If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service, subject to the following conditions:-

(i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the colours and his previous colour service will count towards the minimum service required for transfer to the reserve.

(ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve.

(c) The counting of former service for pension or gratuity is governed by the provisions of Pension Regulations." 7 The next submission on behalf of the respondents is that the injury/disability sustained by the Appellant is neither attributable nor aggravated by Military Service, thereby disentitling him for grant of disability pension. We must draw an adverse presumption against the respondents, inasmuch as no impairment in the Appellant's hearing had been detected at the time when he was enrolled on 15.3.2001, pursuant to a complete physical check up. In fact, an adverse presumption is postulated in Appendix II (supra). In our opinion, the version of the Appellant that injury was sustained by him as a result of his having been slapped by his Instructor, or for that matter by any other Combatant, has credibility. We had already adverted to the Confidential Medical Report dated 5th August, 2001 which specifically contains a mention of the Appellant having been assaulted. In the circumstances, we cannot but conclude that the injury was 'either attributable or aggravated by Military Service'. Having undergone a thorough medical examination only one year prior to the incident, had the injury or disability been congenital or been in existence at the time of recruitment, it would have been duly discovered. Therefore, on both counts viz. disability to the extent of less than 20 per cent, as well as it having been occurred in the course of Military Service, the findings have to be in favour of the Appellant. 8 Paragraph 183 of the Pension Regulations for the Army 1961, (Part-I) stipulates as under:-

"183. The disability pension consists of two elements viz. Service element and disability element which shall be assessed as under: (1) Service element .....

(2) Disability element .....

.....

In case where an individual is invalidated out of service before completion of his prescribed engagement/service limit on account of disability which is attributable to or aggravated by military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army Part-I(1961). "

9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

10. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the Appellant within three months from today.

11. As there is no representation on behalf of the Appellant, a copy of this Order be dispatched to the Appellant at the given address. There will be no order as to costs.

.....J.

[VIKRAMAJIT SEN] .....J.

[SHIVA KIRTI SINGH] New Delhi June 25, 2014.
