GAHC010253572018

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : WP(C)/7975/2018**

MOHAN SINGH

VERSUS

THE UNION OF INDIA AND 2 ORS.
THROUGH THE SECRETARY, MINISTRY OF DEFENCE, GOVT. OF INDI, NEW DELHI-110011.

2:THE DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG-793010.

3:THE COMMANDANT
15 ASSAM RIFLES
C/O. 99 APO

**Advocate for the Petitioner** : MS. A DEVI

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE**
**HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**JUDGMENT**

**Date : 12-02-2024**

1. Heard Ms. A Devi, learned legal Aid counsel for the petitioner. Also heard Mr. SS Roy, learned counsel for the respondent

Nos.1 to 3.

2. The present writ petition is filed assailing orders dated 04.10.2002 and 06.01.2011 whereby the claim of the petitioner for disability pension was rejected. The further grievance of the petitioner is that he preferred an representation against such decision on 21.04.2014 and the same has not yet been decided.

3. The brief fact leading to filing of the present writ petition are as under:

I. The petitioner herein was a Rifleman (General duty) enrolled in the Assam Rifles on 25.11.1991. After completion of his military training he was posted at 15th Assam Rifles on 27.02.1993. The petitioner was granted 60 days Earned Leave with 12 days Journey Period w.e.f. 27.01.1994 to 08.04.1994, and therefore, he was required to report for his duty on 09.04.1994. But he did not rejoin his duty on the said date and later, he voluntarily rejoined his duty on 14.12.1994 absenting himself for a period of 242 days.

II. The petitioner, while reporting before the authorities concerned and rejoining his service on 14.12.1994, informed that he had developed abnormal mental behavior at his residence during his leave period. Accordingly, respondent No. 3/the Commandant, 15th Assam Rifles, regularized his period of absence of 245 days by granting him 66 days of Earned Leave, 60 days of Half Pay Leave and 116 days of Extraordinary Leave in terms of Clause 15 of the Assam Rifles Part-II order No. 03/156/96.

III. After rejoining his service on 14.12.1994, the petitioner was kept under medical supervision and was referred to No. 5 Air Force Hospital for his medical treatment and for further management on 09.01.1995. However, he was found to have suffered from "Non Organic Psychosis" by the Psychiatrics and was placed in Low Medical Category CEE (Temporary) w.e.f. 01.02.1995.

IV. His medical treatment, medical status as well as his health condition were reviewed by the Department of Mental Hospital, Tezpur and at 5th Air Force Hospital, Jorhat from time to time and as his medical condition did not improve, he was finally placed in Low Medical Category, CEE (Permanent) w.e.f. 01.02.1999.

V. Due to his abnormal mental behavior, it was felt difficult to retain him in defence service and as per the opinion of the Psychiatrics of 5th Air Force Hospital, Jorhat, the petitioner was invalidated out from service w.e.f. 31.03.2001 for Low Medical Category CEE (Psy) Permanent disability of "Non Organic Psychosis". It was declared by the Medical Board that such disability is not attributable/aggravated to service conditions.

VI. The petitioner's contention is that it is an admitted position that he was serving in the Assam Rifles since 25.11.1991 and was discharged from service on 31.03.2001, whereas his period of absence of 242 days in service was regularized by the Commandant of 15th Assam Rifles and as

such, since 25.11.1991 to 31.03.2001, he had served as a Rifleman (General duty) in the Assam Rifles for a period of 9 years 4 months 6 days.

VII. It is apposite to record that the petitioner earlier approached this court by filing WP(C) No.3040/2002 seeking a direction to the authorities to grant the petitioner disability pension. This court disposed of the said writ petition by its order dated 16.05.2002 directing the respondents to complete the process of finalizing the matter as to granting disability pension on medical ground to the petitioner as per relevant rules with a liberty to the petitioner to approach this court, if he feels aggrieved by any decision passed by the authorities.

VIII. Pursuant to such decision of this Court, a medical examination was conducted and it was concluded that the petitioner was suffering from "non organic psychosis", which was not attributable to and not aggravated by the service condition and therefore, the petitioner is not entitled for disability pension. Being aggrieved by orders dated 04.10.2002 and 06.01.2011, the present writ petition is filed.

**ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE PETITIONER**

I. Ms. Devi, learned Legal Aid Counsel by referring to the discharge certificate of the petitioner, submitted before the Court that the concerned Medical Board specified that the petitioner was found suitable for rejoining his service in the

Assam Rifles in Civil Post but the respondent authorities in Assam Rifles did not consider his case for allowing him to rejoin in his service in a Civil Post and instead discharged him from service w.e.f. 31.03.2001.

II. Ms. Devi, learned Legal Aid Counsel further submits that a member of Armed forces is presumed to be in sound physical and mental condition upon entering service, if there is no note or entry to the contrary in his record and in the event, he is subsequently discharged from service on medical ground, onus to prove that deterioration in his health was not due to service condition, lies on the employer and in case of failure on the part of the employer to discharge such burden the benefit of doubt thereof must go to the employee. According to the learned Counsel, there is no material to show that the petitioner is having any such disease at the time of entry into service.

III. Ms. Devi, learned counsel for the petitioner further contends that as the petitioner had served for more than 9 years since 25.11.1991 till the date of his discharge from service on 31.03.2001, he is entitled for Disability Pension.

**ARGUMENTS ADVANCED BY THE UNION OF INDIA**

I. Mr. SS Roy learned counsel relying on Rule 49(2)(b) of the CCS (Pension Rules) 1972 (hereinafter referred to Rule 1972), argues that the petitioner was not having the required qualifying service of 10 years for grant of invalid pension

inasmuch as he had put a total 8 years 8 months and 7 days of qualifying service at the time of invalidation on 30.01.2001. Accordingly, the case of the petitioner was rightly rejected by the respondent authorities.

II. Mr. Roy further contends that the petitioner was also found ineligible for grant of disability pension under CCS (Extraordinary Pension Rules), 1939 as his disease was found to be not attributable to /not aggravated by the service conditions as per Rule 3(A) of the Rules 1939 (hereinafter referred to as rules 1939). Accordingly, Mr. Roy, learned counsel for the respondents, contends that the action of the respondents cannot, therefore, be treated as arbitrary or illegal. Accordingly, he submits that the writ petition is liable to be dismissed.

III. While concluding his argument Mr. S.S. Roy learned counsel placing reliance on the decision of the hon'ble Apex Court in the case of ***Union of India and others Vs. Rakesh Kumar and others*** reported in ***(2001) 4 SCC 309*** submits that no person can claim any right *dehors* statutory rules.

4. **DETERMINATION**

I. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Perused the materials available on record including the proceeding before the Medical Board. The decisions relied on by the learned counsel for the respondents is also given due consideration.

II. Invalid pension under Rule 38 of the Rules 1972 can be granted to a Government servant, when the Government servant retires from service on account of any bodily or mental infirmity, which has permanently incapacitated him for his service. A Government servant applying for such invalid pension is required to submit a medical certificate of incapacity issued by a Medical Board, in case of gazetted and non gazetted government servant, who is getting a pay not exceeding a certain amount *per-mesne* and in case of other employees, such certificate is to be issued by a civil servant or a district Medical Officer or Medical Officer of equivalent status.

III. Rule 3(A) of the Rules 1939, provides that disablement is to be accepted as due to Government service subject to the condition that it is certified that such disablement is due to wound/injury or disease attributable to government service. The said rule further mandates that such disablement shall also be accepted as "due to Government service", when such disease, either existed before or arose during the government service and continues and remains aggravated.

IV.In the case in hand, the record annexed with the affidavit in opposition including the medical case sheet, summary and opinion of the Medical Board discloses the following.

a. In the year 1994, the petitioner behaved abnormally while on leave and he was managed by a Civil Psychiatrist as a case of bipolar affective disorder.

b. Subsequently, the petitioner was sent to Army

Hospital in January, 1994. He responded to the anti psychotic medicine and he was placed in the low medical category.

c. During review in November 1997, presence of residual features were noted. Again review was done in the month of April 1999 and bizarre ideas were elicited in mental state examination and the petitioner was continued to be managed with anti psychotic medicines.

d. While doing the subsequent review on 19.02.2000, he was found to be slow but he was otherwise normal. In the said report, the Medical Officer had reported non co-operativeness with refusal to obey orders and aimless wandering.Presence of irritability, impaired social perception and insight were found, however, no active psychotic features were there. Accordingly, it was opined that he is fit to be released from service.

e. The record also reveals that there was no such mental condition before the petitioner joined the armed forces nor such a fact was recorded in any of the Medical examinations.

V. From the record, this court has not found any material on record to show that there was any disability involving any physical or mental condition at the time of entry into service on 25.11.1991. Such a condition was first revealed in the year 1994 and the same was managed with psychotic medicines and on 19.02.2000 no active psychotic features were found, though

irritability and impaired social perceptions and insights were found.

VI. Proposition of Law on the basis of different judgments rendered by the Hon'ble Apex court ((Ref ***Dharambir Singh Vs. Union of India*** reported in ***(2013) 7 SCC 316***, ***Ex Hav Mani Ram Bhaira Vs. Union Of India***, ***Civil Appeal No.4409/2011*** decided on 11.02.2016, ***Satwinder Singh Vs. Union of India***, ***Civil Appeal No.1695/2016*** decided on 11.02.2016, ***Sukhwinder Singh Vs. Union of India*** reported in ***(2014) 1 SCC 364***) , can be summarized in the following manner:

a. There is a presumption of sound physical and mental condition at the time of entry into the service. In case of a medical discharge, any deterioration in health is presumed to be due to military service.

b. Diseases leading to discharge are presumed to have arisen during service, if not noted at the entry into service.

c. If a disease could not have been detected at entry, the Medical Board must provide reasons;

d. Burden to establish discontent between the disease and the service in armed forces lies with the employer and the employee need not prove the origin of the disease.

5. Now coming to the case in hand, it is seen that the Medical Board has not recorded any reason for concluding that disability was not attributable to the service inasmuch as from the said report it is clear that at the time of the entry i.e., in the year 1991, the petitioner

was not having any psychiatric disorder.

6. From a bare reading of Rule 3(A) of the Rules 1939, it is clear that there is a presumption in favour of the employee. The rule prescribes that when a disease is detected during government service and remains aggravated, the same is to be deemed to be accepted as arose due to the Government Service. At the same time, as discussed hereinabove, the law is also equally well settled that the presumption is to the effect that when at the time of entry into the service, no disease is recorded, it is to be presumed that such disease has been acquired due to the service in the armed forces. Therefore, the argument of the Union of India and the reason of rejection of the claim of the petitioner relying on Rule 3(A) of the Rules 1939, is not sustainable in law, more particularly in view of the presumption prescribed under Rule 3(A) and the admitted fact that the disease was not detected at the entry into the service but the same was detected during the course of service and the same was aggravated resulting in discharge of the petitioner after rendering more than 8 years and 8 months and 7 days of service.

7. Regarding the qualifying service of disability pension, this court is of the considered opinion that Rule 49 of the Rules 1972 shall not be applicable in the case in hand for the reason that the pension claim was disability pension and not an invalid pension inasmuch as for grant of disability pension, no qualifying period is prescribed.

8. Another important aspect of the matter is that there is a difference between invalid pension and disability pension. Invalid pension is granted under Rule 38 of the CCS Pension Rules,1972,

When Government servants seek invalidation for any bodily or mental infirmity, whereas a disability pension is granted under Rules 1939, when the employer discharges the employee having found acquiring disability attributable to service conditions.

9. The qualifying service mandated under Rule 49 of the Rules 1972 shall be applicable when an invalid pension is sought by the employee under Rule 38 of the said Rules. In case of an invalid pension, it is the employee who is to produce a certificate and establish his claim for such an invalid pension. On the other hand, in case of a disability pension, it is the employer who is to have a satisfaction on the basis of medical record/examination of the employee carried out by the employer that the employee has become disable to perform his duties and such disability is attributable to service condition and accordingly, he is discharged from the service and therefore he is entitled for disability pension.

10. Thus in case of an invalid pension, it is the employee who seeks discharge and therefore, there shall be a relevance of qualifying service. On the other hand, in case of a disability pension it is the employer who discharges the employee after arriving at a satisfaction that he has become disable to perform his duties and such disability is attributable to his service condition or aggravated by service condition. Therefore, the legislature in its wisdom has not prescribed for any qualifying service for a disability pension under Rule 3(A) of the Rules 1939.

11. Accordingly, this Court is of the unhesitant view that the respondents could not have rejected the case of the petitioner for

grant of disability pension on the basis of want of qualifying service and also for the reason that the disease was found to be not attributable/not aggravated to service conditions. Thus the legal right of the petitioner under Rule 3(A) of the Rules 1939 has been violated.

12. In view of the aforesaid reasons and discussions, it is held that the petitioner is entitled for disability pension and the impugned decision dated 04.10.2002 and 06.01.2011 whereby the claim of the petitioner for disability pension is rejected are illegal and arbitrary. Accordingly, the impugned orders are set aside and the respondents, more particularly, the respondent No.2 & 3 are directed to grant disability pension to the petitioner from the date of his discharge on medical ground. Such pension be paid within a period of 6 months from the date of furnishing of a certified copy of this order by the petitioner. If such pension is not paid within the aforesaid period of six months, the same will carry an interest @6% per annum.

13. In terms of the above, the writ petitions stand allowed.

**JUDGE**



**Comparing Assistant**