

CASE NO.:
Appeal (civil) 6407 of 2002

PETITIONER:
Union of India and others

RESPONDENT:
Dhir Singh China, Colonel (Retd.)

DATE OF JUDGMENT: 04/02/2003

BENCH:
N. SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:
J U D G M E N T

B.P.SINGH, J.

This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana, Chandigarh dated 24th January, 2001 in LPA No. 216 of 2001 whereby the appellate Bench dismissed the appeal preferred by the appellants-Union of India and others upholding the claim of the respondent to disability pension under Regulation 53 of the Pension Regulations. Earlier a learned Single Judge of the High Court had allowed the writ petition of the respondent herein upholding his claim for disability pension under the aforesaid Regulation 53 as also under Rule 4 of the Entitlement Rules for Casualty Pensioners Awards, 1982 (hereinafter referred to as 'the Entitlement Rules'). The learned Judge accordingly directed the appellants to release the disability pension of the respondent according to Rules and Regulations.

The facts of the case are that the respondent was commissioned in the Indian Army in May, 1964. He served the Indian Army for many years and ultimately superannuated from service on 31st August, 1994 holding the rank of Lieutenant Colonel. The respondent suffered a heart attack on 11th August, 1994 and had to undergo a bye-pass surgery. He also suffered from Open Angle Glaucoma in both eyes. In these circumstances, on 3rd September, 1997 he claimed disability pension which was rejected by the appellants compelling him to file a writ petition before the High Court for a direction to the appellants to pay him, in addition to his service pension, disability pension to which he claimed to be entitled in accordance with the Rules. It is also not in dispute that the respondent was examined by a Medical Board consisting of three members on 31st August, 1994. The Board found that the respondent had suffered disability to the extent of 60% on account of (1) IHD (Angina Pectoris) (40%) and (2) Primary Open Angle Glaucoma in both eyes (20%). The Medical Board was also of the opinion that neither of these diseases were either attributable to or aggravated by military service and that the diseases were constitutional in nature.

Regulation 53 of the Regulations provides as follows :-

"Officers compulsorily retired on account of age or on completion of tenure.

53. An officer compulsorily retired on account

of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority may at the discretion of the President, be granted in addition to retiring pension admissible, a disability element as if he/she had been retired on account of disability, according to accepted degree of disablement at the time of retirement."

Rule 4 of the Entitlement Rules reads as follows :-

"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service."

The learned Single Judge who heard the writ petition accepted the contention of the respondent that apart from Regulation 53, under Rule 4 of the Entitlement Rules, an individual, who at the time of his release under the release regulations, is in a lower medical category than that in which he was recruited, is treated to be invalidated from service. He, therefore, held that the moment an officer is reduced to the inferior category in the medical chart, it automatically amounts to invalidation and consequently he would be entitled to disability pension in addition to the regular service pension.

We may observe that this finding of the learned Judge has not been approved by the Division Bench in appeal, but the Division Bench was of view that in any event the respondent was entitled to disability pension under Regulation 53. Even before us the claim of the respondent was not sought to be justified on the basis of Rule 4 of the Entitlement Rules. We have also considered the aforesaid Rule 4 of the Entitlement Rules and we are also of the view that in the facts and circumstances of the case, the said Rule was not applicable to the case of the respondent.

That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a

disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted.

Learned counsel for the respondent sought to sustain the order of the High Court on the ground that the President, in the meantime, has been pleased to decide and hold that the disabilities suffered by the respondent, which he was found to be suffering at the time of his release from service, be regarded as attributable to military service, and the degree of disablement has been assessed at 60%. The issue has therefore become academic. This submission is misconceived. Annexure P-2 is a communication addressed to the Chief Controller of Defence, Accounts (Pensions), Allahabad by the Under Secretary to the Government of India and is dated 18th October, 2000. The letter refers to the order of the High Court of Punjab and Haryana dated 10th July, 2000 and proceeds to state that the President has sanctioned the implementation of the above said order of the High Court. The authority was accordingly requested to work out the amount involved during the period of award and intimate the same to the Ministry so that ex-post-facto sanction may be accorded. Paragraph 4 of the communication clearly states that the sanction under the letter was, however, without prejudice to the final outcome of the LPA to be filed before the Division Bench of the High Court. It would thus appear from Annexure P-2 that after the judgment and order of the learned Single Judge the President was pleased to sanction payment of disability pension to the respondent with a view to implement and in obedience to the order of the High Court, and accordingly directions were issued to work out the amount involved during the period of award. The sanction was, however, without prejudice to the final outcome of the Letters Patent Appeal to be filed before the Division Bench. The sanction clearly appears to be tentative and without prejudice. Even the relevant part of the final order passed, which is Annexure R-1, dated 17th November, 2000 states as follows :-

"Accordingly, Col. Dhir Singh Chhina IC-21830-K is sanctioned subject to usual condition the disability element of pension @ Rs.450/- (Rs. Four hundred fifty only) P.M. for 60% disablement w.e.f. 31.8.94 till further order."

It would, thus appear that the disability element of pension has been sanctioned till further order. This again makes it quite clear that the sanction is tentative and subject to the pending proceedings. A reading of Annexure R-1 and Annexure P-2, therefore, leaves no room for doubt that in view of the order passed by the High Court, tentative sanction was granted for payment of disability element of pension but the same was without prejudice to the final outcome of the Letters Patent Appeal. It was only in obedience to the order of the Court that such a sanction was granted, but without prejudice to the rights and contentions of the appellants who had challenged

the order of the Court. We, therefore, cannot accept the contention of the counsel for the respondent that in view of the decision of the President of India sanctioning the disability pension, nothing remains to be considered by the Court. The sanction clearly is tentative and till further order. This was necessary since the proceedings were still pending before the Court and the appellants could not predict the out come of the legal proceedings.

In these circumstances we find no substance in the contention of the respondent that he was entitled to disability pension under Regulation 53. We accordingly allow the appeal, set aside the order of the learned Single Judge as affirmed by the Division Bench in LPA No. 216 of 2001 and hold that the respondent is not entitled to disability pension under Regulation 53. However, in the facts and circumstances of the case any payment made by way of disability pension shall not be recovered from the respondent. In the facts of the case there shall be no order as to costs.