SUPREME COURT OF INDIA

Union of India

Vs.

Ram Prakash

C.A.No.4887 of 2010

(Dr.Mukundakam Sharma and Dr.B.S.Chauhan JJ.)

05.07.2010

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order dated 4.7.2005 passed by the learned Single Judge of the Punjab and Haryana High Court whereby the learned Single Judge has allowed the Second Appeal filed by the respondent and thereby setting aside the findings recorded by the Civil Judge (Junior Division) in his judgment and decree dated 27.9.1996 dismissing the suit of the respondent/plaintiff for the grant of disability pension and also the judgment and decree dated 27.8.1998 passed by the Additional District Judge, Jalandhar whereby the appeal filed by the respondent was dismissed.

3. The respondent was enrolled in the Indian Air Force in the month of May, 1970. After he rendered service for 15 years in the Air Force, the Respondent was unwell and consequently he was examined by a Medical Board which was constituted to consider the case of the respondent. After such medical examination, the Release Medical Board found that the respondent suffered from Retinal detachment to the extent of 60% and that the degree of disablement was permanent. He was also found to be suffering from Immature Cataract of both the eyes and his disablement was assessed at 40% by the Release Medical Board.

4. The Release Medical Board assessed the composite disability at 90% and gave an opinion that the said disability suffered by the respondent during his service was neither attributable to nor aggravated by Air Force Service and that the diseases were constitutional in nature.

5. The respondent on being discharged from service in terms of the opinion of the Release Medical Board claimed for payment of disability pension. The Appellate authority, however, informed the respondent that disability for which the respondent was released from service were constitutional in nature. The authorities namely Chief Controller of Defence Accounts

(Pension) and the appellate medical authority examined the case of the respondent and thereafter both the authorities held that the disability suffered by the respondent was not due to injury suffered during the course of duty or because of nature of duties performed by the respondent.

> "The appellate authority also gave an opinion that the disease of the respondent was neither attributable to nor aggravated by Air Force service."

6. Being aggrieved by the aforesaid order, the respondent herein filed a suit claiming payment of disability pension on the ground that at the time of his entry to the Air Force service, no such disease was recorded in his records and therefore, onset of the aforesaid disease during the course of service should be considered as attributable to service, particularly due to the adverse service conditions which caused the disease.

7. The aforesaid suit was contested by the appellant herein by filing a detailed written statement. On the basis of the pleadings of the parties, several issues were framed and the parties led their evidence in support of their cases, and finally by judgment and decree dated 27.9.1996, the learned Trial Court dismissed the suit.

8. Being aggrieved by the aforesaid judgment and decree, the respondent filed an appeal before the first appellate court which was heard and was dismissed.

9. The respondent being aggrieved by the aforesaid concurrent findings of fact arrived at by the two courts below filed a second appeal in the Punjab and Haryana High Court which, however, after hearing the parties was allowed by the learned Single Judge, on account of which the present appeal was filed by the appellant herein.

> "The appeal was listed before us and the counsel appearing for the parties were heard at length."

10. The counsel appearing for the appellants submitted before us that the High Court was not justified in interfering with the concurrent findings of fact of two courts below and therefore, the said judgment is required to be set aside and quashed. It was also submitted that the medical report having a primacy, should have been given due weightage and primary consideration and the learned Single Judge was not justified in substituting the said findings and opinion of the Medical Board by substituting its own opinion.

11. The aforesaid submissions of the counsel appearing for the appellant were refuted by the counsel appearing for the respondent who submitted that the High Court was justified in holding that since at the time of his entry in the Air Force on 1.5.1970, no such disease was found despite a thorough medical check up, it must be held that the adverse service conditions of the Respondent was the cause for onset of the diseases in question.

12. In the light of the aforesaid submissions of the counsel appearing for the parties, the question that falls for our consideration is whether or not the disability suffered by the respondent court be attributed to the service conditions of the Air Force service.

13. The Pension Regulations was enacted for the Air Force, the provisions of which are made applicable to the personnel of the Air Force and all claims of pension are to be regulated by the provisions made in the Regulations at the time of individual's retirement or release or discharge as the case may be.

14. Section III of the said Air Force Pension Regulations deals with the Disability Pensioner Awards. Regulation 37 provides the manner and method of entertaining the claim of disability pension and also the circumstances under which such pension becomes admissible.

> "Regulation 37 reads as follows:- "37(a) An officer who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section.
>
> (b) The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II."

15. Section IV of the said Pension Regulations deals with the primary conditions for the grant of disability pension. In Regulation 153, it is stated thus;

> "153. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or over.
>
> 154. The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II."

16. In the light of the aforesaid provisions, what is laid down in Appendix 2 becomes relevant. The said Appendix 2 deals with the Entitlement Rules. It is provided therein that the aforesaid Entitlement Rules would apply in cases where the disablement or death, on which the claim to casualty pensioner award is based. Rule 1, 2, 3 and 4 read as follows:-

> "1. With effect from 1st April, 1948, in supersession of all previous orders on the subject, the entitlement to disability and family pension, children's allowance and death gratuities will be governed by the following rules.
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> Invaliding from service 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 invalided from service. Airmen 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 invalided out of service.

2. Disablement or death shall be accepted as due to air force service provided it is certified that :- (a) the disablement is due to a wound, injury or disease which –

(i) is attributable to air force service ; or (ii) existed before or arose during air force service and has been and remains aggravated thereby ;

(b) the death was due to or hastened by - (i) a wound, injury or disease which was attributable to air force service;

(ii) the aggravation by air force service of a wound, injury or disease which existed before or arose during air force service.

3. There must be a casual connection between disablement and air force service for attributability or aggravation to be conceded."

17. There is no dispute with regard to the fact that when the respondent was initially appointed as an Air Force Personnel in the Indian Air Force, there was a medical examination held in which he was found to be fit to be appointed to the Air Force. After he had rendered service in the Air Force for about 15 years, the respondent was examined by the Release Medical Board and he was diagnosed as a case of retinal detachment and immature cataract of both the eyes.

18. A Medical Board assessed composite disability at 90%, and in view of the opinion of the said Release Medical Board and as recommended by them, the respondent was released from service. The aforesaid Regulations which are referred to and extracted hereinbefore give primacy to the Report of the Medical Board. The Report of the Medical Board is annexed with the records. Part 3 of the said Report deals with the opinion of the Medical Board. In the said opinion of the Medical Board, it is stated that the aforesaid disabilities did not exist before entering the service. The Medical Board has further given an opinion that the aforesaid diseases from which the respondent was suffering were not attributable to service during peace or under field service conditions nor aggravated thereby. The Medical Board has given a specific and definite opinion that the said diseases were in no manner connected with service.

19. The respondent filed an appeal as against the aforesaid opinion of the Medical Board and his case was considered by the Appellate Medical Board who upheld the aforesaid opinion of the Medical Board and held that the diseases from which the respondent was suffering at the time of his release from Air Force Service, were neither attributable to service nor

aggravated thereby. Despite the aforesaid opinion of the Medical Board, the learned Single Judge took pains to re- appreciate the records, and on such appreciation held that there could be presumption drawn that the respondent was subjected to perform arduous nature of duties during his span of service with the Indian Air Force inasmuch as it is general knowledge that a person in defence services is always required to perform arduous nature of duties. The aforesaid findings recorded by the Trial Court and Single Judge was presumptive in nature and are based on surmises and conjectures and there is no factual foundation for arriving at such a decision.

> "The learned Single Judge totally ignored the applicability of the aforesaid Regulations to the case of the Respondent.
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> Unless and until it is proved and established that an individual has become disabled to the extent of more than 20% during his service career and released from service due to such disability which is attributable to or aggravated by air force service, he is not entitled to receive such disability pension. Rules are also clear on the issue that such entitlement should be considered and decided giving emphasis and primacy on the opinion of the Medical Board constituted for the purpose."

20. The scope and limit of interfering with the finding of fact in a case under Section 100 of the Code of Civil Procedure has been reiterated by this Court time and again. Instead of going into the ratio of all the aforesaid decisions, we may summarise the legal principles enunciated by this Court in the decision of *Sheel Chand v. Prakash Chand*[1]. In this case, this Court while dealing with question of existence of a substantial question of law, held as follows:-

> "7. ..... The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction by the High Court under the amended provisions of Section 100 CPC. It appears that the learned Single Judge overlooked the change brought about to Section 100 CPC by the amendment made in 1976. The High Court unjustifiably interfered with pure questions of fact while exercising jurisdiction under Section 100 CPC. It was not proper for the learned Single Judge to have reversed the concurrent findings of fact while exercising jurisdiction under Section 100 CPC. That apart, we find that the learned Single Judge did not even notice, let alone answer the question of law which had been formulated by it at the time of admission of the second appeal.
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> There is no reference to the question of law in the impugned order and it appears that the High Court thought that it was dealing with a first appeal and not a second appeal under Section 100 CPC. The findings of fact recorded by the two courts below were based on proper appreciation of evidence and the material on the record. There was no perversity, illegality or irregularity in those findings. None has been brought to our notice by the learned counsel for the respondent either. The findings, therefore, did

not require to be upset in a second appeal under Section 100 CPC. The judgment of the learned Single Judge, under the circumstances, cannot be sustained.....”

21. Several decisions of this Court like *Secretary, Ministry and Ors.*[2], *Union of India & Balachandran Nair*[3] *and Union of India*[4] and Union of India and Anr. had the occasion to deal with a similar issue and in all the aforesaid decisions, it was held that the Medical Board consists of an expert body and that its opinion is entitled to be given due weight and value. The consistent view of this Court is that such opinion of the Medical Board would be given a primacy and a Court should be slow in interfering with and substituting its own opinion with the opinion of the Medical Board.

22. The Medical Board has given a categorical opinion that the diseases for which the respondent has been released from service were neither attributable to nor aggravated by Air Force service. The aforesaid Pension Regulations when read with the Entitlement Rules, make it clear that the determination of attributable or aggravation is as per the Entitlement Rules. As the Medial Board has given a categorical opinion that the ailment of the respondent was constitutional and the same is not attributable to or aggravated by Air Force Service, it was unjustified for the learned Single Judge to set aside the aforesaid concurrent opinions of the appellate Board and Released Medical Board and also the findings recorded by the trial court and also by the First Appellate Court merely because the learned Single Judge felt that there could be a presumption that the respondent was undergoing arduous nature of job as he was appointed as a Air Force personnel.

23. We, therefore, set aside the judgment and order of the learned Single Judge, and allow the appeal filed by the appellant. As a result of this order, the suit filed by the respondent should be held to be dismissed.

[1]*(1998) 6 SCC 683*
[2]*2009 (9) SCC 140*
[3]*2005 (13) SCC 128*
[4]*2003 (2) SCC 382*