

SUPREME COURT OF INDIA

Union of India

Vs.

Ajay Wahi

C.A.No.1002 of 2006

(G.S.Singhvi and C.K.Prasad JJ.)

06.07.2010

JUDGEMENT

C.K.Prasad, J.

1. Union of India and its functionaries, aggrieved by the order dated 28th November, 2003 passed by the Division Bench of the Rajasthan High Court (Jaipur Bench) in DB Civil Special Appeal No.1461 of 1997, have preferred this appeal by special leave of the Court.

2. Shorn of unnecessary details, facts giving rise to this appeal are that the writ petitioner-respondent, Lt.Col.Ajay Wahi (hereinafter referred to as the 'writ petitioner') was commissioned in the Army Medical Corps on 27th February, 1977. While in service and holding the rank of Major he was admitted to Command Hospital on 3rd October, 1988 for management and treatment of Bronchial Asthma and low back ache. Medical Board proceeding dated 6th October, 1988 does not indicate that the disability i.e. Bronchial Asthma or low back ache was directly attributable to military service.

“However, the Medical Board certified that it is aggravated by stress and strain of exposure to hostile terrain and weather.

The writ petitioner was later on examined on 9 th June, 1990 by Col. T.R.S. Bedi, Senior Adviser of Base Hospital who recommended for his posting at dry temperate climate area and not at high altitude. While writ petitioner was holding the rank of Lieutenant Colonel, by letter dated 27th December, 1993, he sought premature retirement, inter alia, stating that his "falling health is affecting" his performance. On his prayer for premature retirement the Commanding Officer recommended for consideration of his case for "invalidment/premature retirement after obtaining the opinion of a Senior Adviser". He was neither called upon to appear before the Medical Board nor invalidated on medical ground.

However, by order dated 26th July, 1994, writ petitioner's prayer for premature retirement was approved and he was allowed to leave the unit on 20th October, 1994. Writ petitioner made claim for grant of disability pension. His prayer was considered and by letter dated 30th March, 1995, he was informed that he is neither entitled for service pension nor disability pension. Writ petitioner wrote to the Director General of Medical Services(Army) to make him available the copy of the Medical Board proceedings, inter alia, alleging that he underwent a Release Medical Board prior to retirement. It is assertion of the writ petitioner that he ought to have been granted premature retirement on medical ground and sought voluntary retirement under pressure and, therefore, entitled to disability pension.”

3. Aggrieved by the denial of disability pension he filed writ petition before the Rajasthan High Court, inter alia, contending that Regulation 50 of the Pension Regulations providing that an officer who retires voluntarily shall not be eligible for disability pension is discriminatory and violative of Article 14 of the Constitution of India. It was emphasized that when an officer is invalided out of service on account of disability attributable to the military service is granted disability pension, there is no rationale basis to deny the same to an officer who has been granted voluntary retirement on medical ground. The aforesaid submission did not find favour with the learned Single Judge and he dismissed the writ petition by order dated 15th May, 1997 inter alia observing as follows:

“Regulations 48 and 50 are contained in Section III which deals with the disability pensionary award. Regulation 50 clearly provides that an officer who retires voluntarily shall not be eligible for any disability pensionary award on account of any disability. Since the petitioner has sought voluntary retirement, he is not entitled to any disability pension award.

Regulation 48 is not applicable to the case of the petitioner because the Regulation 48 applies only when an officer is retired from military service on account of the disability or attaining the superannuation age. The petitioner was voluntarily retired and, therefore, under Regulation 50, he is not entitled to any pensionary award.

I do not think that the Regulation 50 is violative of Article 14 of the Constitution of India. The class of officers who retire voluntarily is quite distinguishable from the class of officers who are retired on account of disability or attaining the superannuation age. The classification of both the said classes of officers is obviously founded on an intelligible differentia which distinguishes persons of one class from another class and the differentia does have a rational relation to the object sought to be achieved by regulations 48 and 50 in relation to the disability pensionary awards. In my opinion, the regulation 50 cannot be said to be ultra vires.”

4. On appeal, the Division Bench of the High Court set aside the order of the learned Single Judge and directed for payment of disability pension and while doing so it relied on a

Judgment of the Delhi High Court in the case of *Lt. Col. B.R. Malhotra vs. U.O.I. & Ors.*¹ relevant portion whereof reads as follows:

“I find no justification to deprive an officer his disability pension simply on the ground that he sought voluntary retirement. If on account of disability Army can invalidate an Officer and thrown him out of the service then why an Officer is denied disability pension when he seeks voluntary retirement. I find no reason for this discrimination. People who become disable due to Military service are a class apart, they cannot be discriminated nor denied disability pension on the ground of voluntary retirement. I see no justification nor any nexus in depriving this class of Officers the disability pension merely because they sought voluntary retirement, the disability does not cease on voluntary retirement. Hence, to my mind, Rule 50 of the Pension Regulation is discriminatory.

It cannot stands the test being arbitrary and bad in law.”

5. Ultimately, the Division Bench directed for grant of disability pension to the writ petitioner and while doing so observed as follows:

“Considering the view and object behind the provision for allowing the disability pension, when admittedly the officer has become disabled and cannot remain in service, whether he has been voluntary retired or compulsorily retired that is immaterial for the purpose of pension to the person who become disabled during service.”

6. Union of India and its officers, aggrieved by the aforesaid order, are before us by grant of special leave to appeal.

7. Mr. P.P. Malhotra, learned Additional Solicitor General contends that writ petitioner sought voluntary retirement on medical ground and, therefore, cannot be said to be invalided out of service on account of disability attributable to or aggravated by military service. He points out that a comprehensive procedure is prescribed in Appendix II of Pension Regulations to determine as to whether a disability is attributable to or aggravated by military service. He points out that disability of the petitioner was not determined under the Rules in Appendix II and the writ petitioner sought voluntary retirement claiming ill health, hence, it cannot be said that he was invalided out of service on account of disability attributable to or aggravated by military service. He submits that in view of Regulation 50 of Pension Regulations, writ 7 petitioner having retired voluntarily shall not be eligible for award of pension on account of any disability.

8. Mrs. Amita Duggal, however, appearing on behalf of the writ petitioner-respondent submits that the writ petitioner sought voluntary retirement on medical ground and though he was not invalided out of service on account of disability, no distinction can be made between officer who has been invalided on account of a disability attributable or aggravated by

military service and an officer who retired voluntarily and, therefore, the action of the respondent in denying the disability pension is illegal. She points out that Regulation 50 which provides that an officer retiring voluntarily shall not be eligible for award of disability pension is discriminatory and, therefore, violative of Article 14 of the Constitution of India.

She referred to the decision of the Delhi High Court in the case of Lt.Col.B.R. Malhotra (supra) relied on in the impugned order. She points out that the Union of India having not challenged the aforesaid judgment of the Delhi High Court, it has attained finality and, therefore, action of the Union of 8 India in denying the writ petitioner disability pension is discriminatory.

9. Mrs. Duggal has also placed reliance on a Division Bench Judgment of the Delhi High Court in the case of *Mahavir Singh Narwal vs. Union of India and another*² and she had drawn our attention to the following passage from paragraph of the judgment, which reads as follows:

“Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Rule 173.

We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 upto date. For future disability pension the respondent may conduct another medical board to assess the percentage of disability of the petitioner. Arrears of disability pension be paid to the petitioner within a period of 8 weeks.

If the same are not paid within weeks the petitioner shall be entitled to the interest at the rate of 9% on the amount of arrears. With these directions the writ petition is allowed.”

10. Rival submission necessitates examination of the scheme of the Pension Regulation. Section III of the Pension Regulations (hereinafter referred to as the "Regulations") applies to all commissioned officers of the Army. Regulation 48 of the Regulations which forms part of Section-III, provides for grant of disability pension to an officer who is invalided out of service on account of disability attributable to or aggravated by military service and Appendix II provides for the procedure for determination of the disability, the same reads as follows:

“48(a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 30 percent or more.

(b)The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.”

11. Regulation 50 of the Regulations provides that an officer who retires voluntarily shall not be eligible for any award of disability pension, same reads as follows:

“50. An officer who retires voluntarily shall not be eligible for any award on account of any disability.

Provided that officer who is due for retirement on completion of tenure, or on completion of service limits or on completion of the terms of engagement or on attaining the prescribed age of retirement, and who seeks pre-mature retirement for the purpose of getting higher commutation value of pension, shall remain eligible for disability element.”

12. From a plain reading of Regulation 48 of the Regulations it is evident that unless otherwise specifically provided a disability pension shall be granted to an officer who is invalided out of service on account of disability attributable to or aggravated by military service, whereas Regulation 50 in no uncertain terms provides that an officer who retires voluntarily shall not be eligible for any award on account of any disability.

“Undisputedly, writ petitioner has not been invalided out of service on account of any disability attributable or aggravated by military service and further his disability has not been determined under the Rules in Appendix II. Writ petitioner had sought voluntary retirement on medical ground which was granted. In face of the language of Regulation 50 there is no escape from the conclusion that an officer retiring voluntarily shall not be eligible for disability pension.”

13. Faced with this situation, writ petitioner contends that Regulation 50 of the Regulations is discriminatory and thus violative of Article 14 of the Constitution of India.

14. Regulation 48 of the Regulations provides for disability pension to officers who are invalided out of service on account of disability attributable to the military service and, therefore, such officers constitute a class in itself. Officers who retire voluntarily constitute a different class altogether and, therefore, the plea that when an officer is invalided on the ground of disability attributable to the military service, there is no reason to deny such disability pension to an officer who seeks voluntary retirement does not appeal to us as in our opinion both constitute different and distinct classes. Article 14 of the Constitution frowns on discrimination but it permits reasonable classification. An officer who retires voluntarily and another who is invalided out of service on account of disability attributable to military service constitute different and distinct classes. Undisputedly, writ petition has not been invalided out of service on account of disability which is attributable to military service but retired voluntarily. Voluntary retirement can be sought and granted on many grounds, whereas an officer under Regulation 48 of the Regulations can be invalided out of service on

account of disability attributable to military service. It is to be borne in mind that if employer despite disability attributable to Military Service does not invalidate an officer out of service, he continues in service with all the benefits and nobody can make issue of that. It is not the case of the writ petitioner that he was asked to seek voluntary retirement on the threat of being invalidated out of service. In fact, he had chosen to seek voluntary retirement on health ground which was granted and it was not the act of the employer to invalidate him out of service. We are of the opinion that the observation of the High Court that an officer cannot be denied disability pension on the ground of voluntary retirement suffers from fundamental error. Officers invalidated out of service and seeking voluntary retirement, which can be on umpteen grounds, constitute different and distinct class than invalidation from service on the ground of disability attributable or aggravated by Military Service. It needs no discussion that a provision of the Statute can be declared ultra vires only when it patently violates some provision of the Constitution. Regulation under challenge, in our opinion, does not suffer from any such error.

15. We would like here to add that sufficient internal safeguard and remedy have been provided under Appendix II of the Regulation. We hasten to add that in case an officer is denied invalidation from service despite disability attributable to military service, the same shall be subject to judicial review.

“There may be a case in which an officer had suffered disability attributable to or aggravated by military service and he has not been invalidated out of service only to deny him the disability pension, his remedy is to challenge the order by which prayer for invalidating out of service is denied. In case it is found that an officer is entitled for invalidation out of service has wrongly been denied the same, he shall be entitled for disability pension. Here no such challenge is made and the only plea of the writ petitioner is that Regulation 50 of the Regulations providing that an officer retiring voluntarily shall not be eligible for disability pension is discriminatory and thus ultra vires of the Article 14 of the Constitution of India.”

16. True it is that the judgment of the Delhi High Court in the case of *Lt.Col.B.R. Malhotra (Supra)* supports the contention of the writ petitioner but from what we have pointed above, its observation that "people who become disable due to military service are a class apart, they cannot be discriminated nor denied disability pension on the ground of voluntary retirement" is patently fallacious.

17. In the present case it has not been determined in accordance with Appendix II of the Regulations that writ petitioner's voluntary retirement was accepted on the ground of disability attributable to or aggravated by military service and, therefore, he shall not be entitled for disability pension.

“In view of the aforesaid the judgment of the Delhi High Court in the case of *Mahavir Singh Narwal (Supra)* has no bearing at all.”

18. We are of the opinion that an officer is entitled for disability pension only when he is invalidated out of service on account of disability attributable to military service or aggravated thereby and shall not be entitled for disability pension in case of voluntary retirement, unless it is found and held that the officer deserved to be invalidated out of service on account of disability attributable to military service but the same was not granted to him for unjustified reasons and forced to seek voluntary retirement.

19. In the result, the appeal is allowed, the impugned judgment of the Division Bench of the High Court is set aside and that of the learned Single Judge is restored. No costs.

¹[71(1998) Delhi Law Times 498]

²[111(2004) Delhi Law Times 550]