

# CHANDIMANDIR

**O.A No. 26 of 2010**

Vs

## U.O.I & ors

## JUDGMENT

Present: For the applicant: Mr.DVHR Jolly, Advocate.

For the respondents: Mr. Sandeep Bansal, CGC.

**Quoram: Justice Ghanshyam Prasad**

**Lt Gen A S Bahia(Retd)**

**JUSTICE GHANSHYAM PRASAD**

This is the second appeal filed by the applicant (appellant) against the judgment and decree dated 3-11-2009 passed by the Additional District Judge, Ambala, in Civil appeal No. 56 of 2009, whereby judgment and decree passed by the Civil Judge (Junior Division), Ambala City in Civil Suit No.704/06/03 has been affirmed.

Heard the learned counsel for the parties and perused the material on record.

It appears that the applicant, who is a retired military personnel filed a suit for declaration to the effect that he is entitled to disability pension on account of disease suffered by him during the army service from 27-6-1967 to 01-01-1972.

The case of the applicant (appellant) in brief is that he was enrolled in the Regiment of Artillery on 27-06-1967. While the applicant (appellant) was in the army, he developed the problem of backache. He was referred to medical treatment and invalidated out of service on 1-01-1972 by a Medical Board in 'low medical category-EEE' being diagnosed with the disease of **Epilepsy**. As per him, the Medical Board had opined that the petitioner had a disability of 30-40% at the time of discharge. Since the disease was developed during service in the Army, it is claimed that he is entitled to get invalid pension.

The defendants-Union of India and others, filed written statement and contested the case.

It has been averred that the applicant (appellant) was invalidated out of service as he was suffering from disease '**Idiopathic epilepsy**'. The degree of disease was assessed as less than 20% and he was not granted disability pension. It has further been averred that the disease could not be presumed to have occurred due to army service. The applicant (appellant) has already been granted all terminal benefits except the disability pension after his discharge from the service.

The learned lower court framed as many as six issues. However, the main issue is Issue No.1 which is with regard to entitlement of the petitioner for disability pension.

The learned lower court after considering the Regulation 173 of Pension Regulations for the Army, 1961 as well as other oral evidence, ultimately held that the disease in question cannot be deemed

to have been acquired or occurred as a consequence of army service. Hence the petitioner was refused the disability pension as prayed for.

The learned Appellate Court after considering the material available on the record held that the disease **Epilepsy** from which the petitioner was found to suffer, was not actually constitutional, rather it was developed as a result of military service. However, the learned Appellate Court also refused to grant disability pension as the Medical Board had assessed the disability at less than 20% which is an essential condition for grant of disability pension. The learned Appellate Court also did not allow the service element of disability pension as no such specific relief had been sought for by the applicant.

The admitted fact in this case is that the applicant (appellant) was enrolled in the army service on 27-06-1967 and was boarded out from the service on medical ground on 01-01-1972. It is also admitted that at the time of release, the Release Medical Board was held and the Board had found that the applicant (appellant) was suffering from **epilepsy**, but the degree of disability was assessed at less than 20%. The Appellate Court also found that the disease was actually related to military service as there was no endorsement to that effect at the time of entry of the applicant in military service.

Needless to mention that since one of the requirements for grant of disability pension i.e. disability being more than 20%, is not fulfilled as provided in paragraph 173 of the Pension Regulations for the Army, 1961 (Part-1), the applicant (appellant) is not entitled to the

disability pension. However, from the admitted facts mentioned above, it is quite clear that in the event of his disability being less than 20% the applicant (appellant) is entitled to get 'service element' of the disability pension in terms of paragraph 186 of the Pension Regulations, 1961 which runs as under:-

“186(1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.”

In view of the above legal position, it is quite apparent that the applicant (appellant) is entitled to get service element only.

Accordingly, this appeal is allowed only to the above extent. The respondents are directed to assess and release service element in favour of the applicant (appellant) within a period of three months from the date of receipt of this order. The applicant is also entitled to arrears with 10% per annum interest. However, the same shall be restricted to a period of 3 years from the date of filing of the suit.

**(Justice Ghanshyam Prasad)**

**(Lt Gen A S Bahia( Retd)**

**04-02-2010**  
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