

M/L.14
06.04.2026
Ct. No.07
J.Das

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14244 of 2023

Arabinda Mondal
Vs.
Union of India and Ors.

Ms. Parna Mukherjee
... For the petitioner

Mr. Souvik Nandy
Mrs. Sayani Roy Chowdhury
...For the UOI

1. The grievance of the petitioner is primarily directed against the refusal of the respondent authorities in sanctioning disability pension in favour of the petitioner.
2. Briefly, the petitioner was an ex-constable in the Border Security Force (BSF) and was enrolled on 25 December 1999. After completion of approximately 21 years of qualifying service the petitioner retired from service on the ground of physical unfitness on 31 May 2021.
3. It is fairly admitted that the petitioner was in good health in October 2006 when he developed pain in his thigh. Gradually, the petitioner also developed swelling on the posterior aspect of the left thigh which continued to increase in size. At this point of time he had consulted a Unit Hospital from where he was referred to a different hospital in Kolkata and underwent elaborate evaluation.

Subsequently, the petitioner was admitted to hospital on 28 November 2006 and his diagnosis confirmed Myxoidliposarcoma. The petitioner was discharged on 7 December 2006 and was thereafter treated at the Cancer Centre Welfare Home & Research Centre, Thakurpukur, Kolkata. The petitioner underwent further investigation. It is admitted that the petitioner has completed his cycle of chemotherapy and radiation. Since then the petitioner has been regularly checked by the Appropriate Authorities. On behalf of the petitioner, it is submitted that the petitioner is entitled to disability pension and non-grant of the same is without basis.

4. On behalf of the respondent it is submitted that there has been gross suppression of facts. The petitioner has suppressed that pursuant to an examination by the Medical Board of the respondent authorities, the petitioner had unilaterally and of own volition signed a No Objection Certificate dated 3 May 2021.
5. There has been no appeal nor review of the said decision and the petitioner unequivocally accepted the order and the findings of the respondent authorities. In this background, the entire case made out in the writ petition is belated, an afterthought and has been concocted. In any event, in view of the illness and the Report filed by

the Authorities the entire claim of the disability benefit is misconceived and untenable in law. In support of such contention, the petitioner relies on *Sukhwant Singh v. Union of India* (2012) 12 SCC 228.

6. In ***Sukhwant Singh v. Union of India*** (Supra), it has been held as follows:

5. We have heard Mr Bhim Sen Sehgal, learned counsel appearing for the appellants in both the appeals and we have also gone through the judgment of the Tribunal. The Tribunal has painstakingly examined a conspectus of decisions on the issue of disability pension and having carefully analysed those decisions has summed up the legal position (at p. 67 of the paper book) as under:

“To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation, where the disability or fatality occurs during the time the individual is on authorised leave of any kind:

(a) The mere fact of a person being on ‘duty’ or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as ‘duty’.

(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of

the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

7. The entire facts of the case reveal that the Medical Board had conducted their investigation and after examining the case of the petitioner were of the clear opinion that the illness of the petitioner was in no manner attributable to the condition of his service. Nor was the illness aggravated by anything which the petitioner had done in service. This was subsequently confirmed by an order dated 29 May 2021. In fact, the respondent authorities had confirmed that the petitioner was to retire with effect from 31 May 2021 on the ground of physical unfitness in terms of Rule 25 of the BSF Rule 1969.
8. On 9 April 2021, the petitioner ultimately retired on medical grounds due to physical disability and

a Certificate to the same effect was duly issued to the petitioner.

9. By a communication dated 3 May 2021 the petitioner voluntarily furnished a “No Objection Certificate” and unequivocally accepted the findings of the respondent authorities as well as the findings of the Medical Board.
10. In this background, an order dated 24 May 2021 was also issued by the respondent authorities against which there has been no appeal nor review. In view of the nature of the illness suffered by the petitioner, the same cannot by any stretch of imagination be attributable to his service with the respondent authorities. The uncertainties of employment cannot stretch to an extent of absurdity. The illness of the petitioner is entirely unconnected and has nothing to do with his service.
11. In such circumstances, there is no enforceable legal right which the petitioner has been able to demonstrate in order to seek the relief of disability pension. The grievance of the petitioner is misconceived and without any legal or factual basis. In any event, in view of the “No Objection Certificate” which had been granted by the petitioner, the petitioner is estopped from contending otherwise.

12. In such circumstances, WPA 14244 of 2023 stands dismissed. There shall be no order as to costs.

(Ravi Krishan Kapur, J.)