

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5964/1998@@
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Union of India .. Appellant

Vs.

Neki Ram .. Respondent

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The respondent-Neki Ram brought a suit for grant of disability pension w.e.f. 5.5.1987 and also to release the arrears of disability pension due to him from the appellant.

The respondent claimed that he was enrolled as an Sepoy on 29.9.1980 as Nursing Assistant in the Medical Corps. He was put into AYE category on his medical examination and after enrollment, he completed his course at various training centres. When he was undergoing the advance course of training at Military Hospital Delhi Cantt., he suffered from some disease which was subsequently diagnosed as "Moya-Moya" and, thereafter, he was sent to the Medical Board which found him permanently disabled to the extent of 60% and as such he was discharged on 5.5.1987 on the recommendation of the Medical Board. However, his claim for disability pension had not been accepted on the basis that the disease was

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not attributed nor aggravated due to the Military service.

The trial Court examined the matter from various angles and found that when he joined the service he was hale and hearty and no sign of ill health could be found in him at that time. It was only when he was in service he developed the said disease. In the circumstances, the Court found that the matter should have been put beyond doubt that it was not as a result of Military service or attributable to Military service particularly when he had served continuously for four years. There is no material placed before the Court to rebut the presumption that he had developed the disease in the course of his service. On that basis the trial Court decreed the suit. The first Appellate Court also reiterated the view of the trial Court High Court and dismissed the second appeal. Hence this appeal.

Mr. R.C. Verma, learned counsel appearing for the appellant relied upon the decision of this Court in Union of India and Anr. Vs. Baljit Singh - (1996) 11SCC 315 to contend that in the absence of proof of injury or the illness developed due to Military service being

aggravated thereby, there cannot be a decree to pay him

disability pension. But this decision cannot be of any assistance to the learned counsel in view of the fact that the trial Court and First Appellate court have arrived at their findings on the facts of the case. The High Court and Courts below were influenced by the fact that the respondent was hale and hearty when he joined service and could not have taken ill of the kind complained unless it be in the course of service or aggravated the disease. That initial fact was not disproved by the appellant.

When the trial Court and the first Appellate Court as well as the High Court have gone in detail into the material that has been produced before the Courts and came to the conclusion, we do not think that we should sit in judgment over the same. In the peculiar facts and circumstances of this case, we do not think, there is any reason for us to interfere with the orders made by the Courts below and the High Court. The appeal stands dismissed accordingly.

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[S. RAJENDRA BABU]@@
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[DORAISWAMY RAJU] @@
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New Delhi,@@
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September 27, 2001.

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ITEM NO.125 COURT NO.7 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5964/1998

U O I .. Appellant (s)

Vs.

Neki Ram .. Respondent(s)
(With prayer for interim relief)

DATE :27.9.2001 : This/These matter (s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Appellant (s) : Mr. R.C. Verma, Adv.
Mr. Kamendra Mishra, Adv.
Mr. C. Radhkrishnan, Adv.

For Respondent (s) :

UPON hearing counsel the Court made the following
O R D E R

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The appeal stands dismissed in terms of the signed order.

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(Meenu Sethi)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file