

(2014) 07 P&H CK 0333

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14432 of 2012 (O and M)

Ajaib Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : (2014) 176 PLR 742

Hon'ble Judges : Hemant Gupta, J;Ajay Tewari, J

Bench : Division Bench

Advocate : Ashok Bhardwaj, Advocate for the Appellant; S.S. Sandhu, Advocate for the Respondent

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order passed by the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (for short "the Tribunal") on 21.10.2011, whereby the claim of the petitioner for grant of disability pension remained unsuccessful. The petitioner was enrolled in the Indian Army on 06.11.1985 and was invalidated out of service on 29.10.1987, when he was found to be suffering from "Marfans Syndrome Mitral Valve Proplase". The claim of the petitioner is that he has been invalidated out on account of disability, which is attributable to or aggravated by military service, therefore, he is entitled to disability pension.

2. The stand of the respondents is that invalidating Medical Board in its meeting held on 12.10.1987 found that the disability is neither attributable to nor aggravated by military service, it being a congenital anomaly detected while the petitioner was undergoing recruit training. The disability was assessed at 11%-14% for two years.

3. The learned Tribunal found that Mitral Valve Proplase (MVP) is generally sporadic, but it is also associated with a variety of congenital disorders of connective tissue including Marfan Syndrome. Marfan Syndrome is connected with mutations on chromosome. The Tribunal concluded that it is a congenital

disorders and any connection with physiologic stress is over a long period of time and its manifestation is late in life. Therefore, the disability of the petitioner is not attributable to or aggravated by military service.

4. The proceedings of the Invalidating Medical Board shows that there is no finding that such disease could not be detected at the time of enrolment of the petitioner. The petitioner has been invalidated out of service on the basis of following opinion recorded by the Medical Specialist on 20.8.2007:

"20 years old rect. with 21 months service was admitted on 04.08.87 with recurrent bouts of palpitations and pain left lower chest, without syncopal attacks or dyspnoea.

On examination he was noted to be marfanoid with Height 183 on arm span 200 cm and high arched palate. Examination of the CVS revealed a systolic click and murmur, appearance earlier on standing and delayed on sweating.

Investigations have revealed a Metacarpal index of 8.9 suggestive of Arahnodactyly and 2-D Echo-cardiography has confirmed Mitral Valve prolapsed with slightly dilated aorta (33 mm). There is no evidence of mitral re-gurgitation.

A case of Marfans Syndrome with Mitral Valve Proplase dilated ascending aorta. With progression of MVP and cystimedial necrosis (known to occur in this syndrome), there is a likelihood of cardiac complications.

Case is referred to Senior Adviser in Medicine for favour of opinion regarding retention in service."

5. The said report of the Medical Specialist was endorsed by the Senior Adviser in Medicine and the petitioner was invalidated out of service. Neither in the report of the Medical Specialist nor in any of the proceedings Invalidating Medical Board report, there is any finding that "Marfans Syndrome Mitral Valve Proplase" could not be detected at the time of entry of the petitioner in military service.

6. The question, as to the requirement of opinion of the Medical Board before invalidation, has been examined by a Division Bench of this Court in CWP No. 7277 of 2013 titled Ex. Naik Umed Singh Vs. Union of India and Others, , wherein it has been held that disease, which is not recorded at the time of entry of the personnel into Army can be said to be attributable to or aggravated by military service unless it is found that such disease could not be detected at the time of entry into military service. It has been held to the following effect:

"In terms of Regulations contained in Appendix II, the Armed Forces personnel are not to prove the conditions of entitlement of pension. They are entitled to receive the benefit of doubt [Clause 9]. In terms of Clause 14, once it is established that conditions of military service did not determine or contribute to the onset of the disease, but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation. But if the medical opinion finds that the disease could not have been detected on medical examination prior to

acceptance of service, disease will not be deemed to have arising during service [(Rule 14(b))]. Thus, if the Medical Board has not opined that disease could not have been detected on medical examination prior to acceptance of service, opinion of the Medical Board that the disease is not attributable or aggravated by military service would be contrary to the statutory regulations and, thus, the report of the Medical Board would be susceptible and liable to be set aside. In that eventuality, it will not be a case of setting aside the report of the Medical Board only for the reason that in exercising of power of judicial review, another view is being taken but such report will be set aside for the reason that it does not satisfy the parameters specified in the Regulations and the instructions. Thus, in cases where the Medical Board does not disclose the reasons that disease could not have been detected on medical examination prior to acceptance of service, the cause of discharge from armed forces, will be deemed to be aggravated or attributable to military service."

7. Thus, the petitioner would be entitled to disability pension in the absence of reasons recorded by the Medical Board. But having said so, the issue is that it was in the year 1987, the petitioner was found to be suffering from "Marfans Syndrome Mitral Valve Proplase" and the disability was assessed to be 11%-14% for a period of two years. There is no further report that the disability of the petitioner is continuing and the extent of disability. Consequently, the order dated 21.10.2011 passed by the Tribunal is set aside but we direct the petitioner to subject himself for an examination by the Medical Board, who will assess the current extent of disability of the petitioner and also within three years of the filing of Original Application. If the petitioner is found continuing to be suffering from such disease and the extent thereof, he shall be granted either the disability pension or service element of disability pension keeping in view the extent of disability, but not for a period of exceeding three years prior to the filing of the Original Application before the Tribunal. The needful be done within three months from the receipt of the copy of the order.

Writ petition stands disposed of accordingly.