
(2009) 07 J&K CK 0019
In the Jammu And Kashmir High Court

Balbir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Citation : (2010) 1 JKJ 503

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nirmal Singh, J.—Petitioner who was enrolled in the army on 4th of Oct'78, was discharged from service on 1st of Nov'02, under Rule

13(3)(III)(i) of Army Rules, 1954, on medical grounds. He was placed in medical category S1H1A1P2E1 (Permanent) w.e.f. 3rd of July'01, due

to the disability namely. ""Hemi Parkinsonism (RT) 332"". His disability was assessed at 30%.

2. The case of the petitioner is that the disability suffered by him was due to the stress and strain of army service, and therefore, he is entitled to

disability pension. It is stated that while recommending the case of the petitioner for release/discharge from service, the petitioner's disability was

held to be due to stress and strain of army service and aggravated by military service, by the authority concerned and the petitioner was held

entitled to full pension and also disability pension. Reliance in this regard has been placed on Annexure A. It is stated that the claim of the petitioner

was forwarded to PCDA(P), Allahabad, but the said authority without taking into consideration the above aspect of the matter that the petitioner's

disability has been found attributable to array service, rejected the claim of the

petitioner for grant of disability pension on the ground that the disability from which the petitioner suffered was constitutional in nature and not related to military service. It is this action on the part of respondents which is the subject matter of challenge in the present petition.

3. Learned Counsel for the petitioner submits that petitioner at the time of his enrolment was hale and hearty and was not found suffering from any such disability. It is stated that petitioner remained in active service for about 24 years and he had not complained about any such problem before the authority concerned, nor any symptoms in this regard were found. It is only after the petitioner remained posted in different stations and due to changed climatic conditions and stress and strain of army service that he developed this disease during service, and therefore, the observation made by the Pension Sanctioning Authority, Allahabad, that the disease is constitutional in nature cannot be taken into consideration as the said conclusion has been arrived at without any record. It is thus submitted that when the petitioner has suffered this disability after more than 20 years of his active service, then, the respondents cannot take a stand the disease from which the petitioner has suffered is constitutional in nature. It is stated that even at the time of entry into service, the respondents had conducted a proper medical check up of the petitioner and no symptoms of the disease aforementioned were found. It is thus submitted that when no note in this regard is made at the time of entry of an individual into service, then, the disability from which an army personnel suffers which leads to his invalidation out of service that too after more than 24 years of active service, then, the disability would be deemed to have been occurred on account of stress and strain of army service.

4. On notice, respondents have filed counter stating therein that at the time of discharge from service, petitioner was in low medical category S1H1A1P2E1 (Permanent) w.e.f. 3rd July'01, due to the disease namely Hemi Parkinson-ism(Rt) 332'. Prior to his discharge, petitioner was brought before the Release Medical Board on 11th of July'02. The said Board, however, opined that the disability of the petitioner is neither attributable to nor aggravated by military service. The disability was held to be constitutional in nature and was assessed at 30%. It is stated that the petitioner's case for grant of disability pension was forwarded to PCDA (P),

Allahabad, but the same was rejected. Petitioner preferred

appeals against the said order of rejection which were also rejected on the ground that the petitioner's disability is constitutional in nature not

related to army service. It is thus stated that the petitioner's disability having not been found attributable to army service, he has rightly been denied

the disability pension.

5. There is no dispute to the effect that in terms of para 173 of Army Pension Regulations, 1961, disability pension can be allowed to an army

personnel if the said disability which lead to his invalidation out of service, is found attributable or aggravated by army service and the same is

assessed at 20% or above. The stand of the respondents is that the disability of the petitioner was assessed at 30% by the Release Medical Board

but the same was held not attributable to army service. At page 3 of the counter filed by respondents, it has further been stated that when the

petitioner filed a second appeal and he appeared before the Appeal Medical Board on 26th of Feb'07, the said Board assessed the disability of

the petitioner at 0%. It is, however, not apparent from the record as to how the disability of the petitioner was assessed at 0% by the Appeal

Medical Board when the Release Medical Board had assessed the disability of the petitioner at 30% permanent. There is also nothing on record to

show as to on what basis, a conclusion was arrived at by the Medical Boards that the disability of the petitioner is not attributable to army service

and is constitutional in nature. As to whether in arriving to such a conclusion, the past history of the petitioner prior to his entry into service or his

family background was taken into consideration is also not apparent from the record.

6. There is no dispute with regard to the proposition that this Court should not interfere so far as an opinion expressed by the Medical Board is

concerned and such a opinion should normally prevail. However, the opinion so expressed by the Medical Board should be based on some facts

which in the present case is not forthcoming from the record. Under such circumstances, it is difficult to accept the opinion of the Medical Board

that the disability of the petitioner which led to his invalidation out of service is constitutional in nature.

7. Rule 14 of the Appendix II of the Entitlement Rules for Casualty Pensionary

Awards, 1982, is relevant and is being reproduced below:

14. In respect of diseases, the following rule will be observed:

a/ Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the

subsequent courses of the disease, will fall for acceptance on the basis of aggravation,

b/ A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the

time of the individual 's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have

been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

c/ If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to

the onset of the disease and that the conditions were due to the circumstances of duty in military service.

8. A perusal of clause (a) noticed above, shows that in case it is established that the conditions of service did not determine or contribute to the

onset of the disease but influenced the subsequent course of the disease, the same would be deemed to have been aggravated by military service.

Similarly in terms of Clauses (b) and (c), a disease which leads to an individual's discharge from service, would ordinarily be deemed to have arisen

in service, if no note of it is made at the time of individual's entry into service. But in case, the medical opinion holds that the disease is such which

could not have been detected prior to individuals entry into service, then the said disease would not be attributable to army service but in that case,

the medical authority has to, base its opinion by stating reasons. In terms of Clause (c), if a disease is held attributable to army service, then, it has

to be established that the conditions of service were such which contributed to the onset of the disease.

9. In the present case, as noticed above, there is no note to the effect that the petitioner suffered from any such disability prior to his entry into

service or that the disease was such which could not have been detected under ordinary examination. Therefore, under these circumstances, the

opinion of the Release Medical Board or the Appeal Medical Board that the

disability suffered by the petitioner is constitutional in nature cannot be accepted. Even if it is accepted that the petitioner was having any symptoms of the said disability prior to his acceptance of service but taking note of the fact that he remained in active service and did not complain about any such problem for more than 20 years, then it will be presumed that the conditions of service were such which influenced the subsequent course of the disease and the same would be deemed to have been aggravated by service in terms of clause (a) noticed above.

10. The disability of the petitioner in the present case is said to be Hemi Parkinsonism (Rt) 332. The said disease in Harrison's Principles of Internal Medicine 16th Edition, has been described as a neurodegenerative disorder characterized by a neuronal accumulation of the presynaptic protein. Even though, the risk factors in such type of disease also include a positive family history but the environmental exposures and other aspects of daily living are also said to be the factors for developing this disease. In terms of the Harrison's Principles of Internal Medicine, abnormalities of balance and posture tend to increase in prominence as the disease progresses. The army personnel during their service, remain posted in different stations having different climatic conditions and under such circumstances it is difficult for the human body to adapt to these different conditions. In the present case, as indicated above, nothing has been placed on record by the respondents to show that the medical opinion regarding disability of the petitioner being constitutional in nature, was based on some reasons. Therefore, in absence of any such material, the hazards of army service contributing to the onset of the disease which led to the petitioner's invalidation out of service cannot be ruled out.

11. In Union of India and Ors. v. Ravinder Kumar LPA (SW) 212/06, a Division Bench of this Court has held as under:

In the instant case the disease on account of which the respondent was invalidated out though constitutional in nature yet to be deemed to have arisen during service on the basis of presumption under Clause (c) of Regulation 423 falls in category B of Annexure III to Appendix -II being a neurotic disorder, is to be accepted to have aggravated by stress and strain. No material has been placed, on record by the appellant to show that stress and strain could not have been the result of conditions of military service,

therefore, it has to be accepted that the stress and strain which aggravated the disease was due to the conditions of military service.

We, therefore, hold the respondent entitled to disability pension.

12. Applying the test of the aforementioned judgment and keeping in view the fact that the respondents in this case also have not placed on record

any material to show that the disease which led to petitioner's invalidation out of service was not due to hazards of army service, I hold that the

disease namely Hemi Parkinsonism (Rt.) 332 from which the petitioner suffered and which led to his invalidation out of service, being a

neurodegenerative disorder occurred due to the stress and strain of army service.

13. The stand of respondents that the disability of the petitioner was found to be 0% by the Appeal Medical Board can also not be accepted in

absence of any material on record as to why it differed with the opinion expressed by the Release Medical Board.

14. For the reasons mentioned above, this petition is allowed. The petitioner is held entitled to disability pension. The percentage of disability shall

be 30% as assessed by the Release Medical Board. Let the disability pension be released in favour of the petitioner within a period of two months

from the date, a copy of this order is made available to the respondents by the petitioner. The petitioner is also held entitled to the arrears of

disability pension which shall also be released within the same period. In case, the appropriate orders in this regard are not passed and the

disability pension is not released within the aforementioned period, then, the petitioner shall be entitled to interest on the arrears @ 9% per annum

and this shall be payable by the person on whose account the delay occurs. Disposed of accordingly along with connected CMPs, if any.