
(2008) 05 RAJ CK 0032
In the Rajasthan High Court

Bhagwan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 173

Citation : (2009) 1 RLW 394 : (2009) 3 SLR 529

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge has been made to the orders dated 21.8.1996, 16.10.1998 and 17.4.2000 whereby

and whereunder the petitioner's request for grant of disability pension was declined. Prayer of the petitioner is to seek disability pension w.e.f.

8.3.1986 along with interest and compensation of Rs. 1,50,000/-.

2. It is contended that the petitioner was enrolled in Army on 24.12.1994 in medical category "A" as he was fully fit and did not suffer from any

disease. The petitioner was thereafter invalidated from services w.e.f. 7.3.1996, after determining him in medical category "E" due to Affective

Psychosis with 40% disability. Petitioner's disability pension claim was rejected firstly vide order dated 21.8.1996 on the ground that the

petitioner's disability is neither attributable to nor aggravated due to military services. Petitioner preferred an appeal against the aforesaid order, but

the appeal thereupon was also rejected. Petitioner thereafter preferred another appeal to higher authority, but the said appeal was also rejected.

3. Learned Counsel for the petitioner submits that denial of disability pension to

the petitioner is wholly illegal in view of the fact that petitioner having sustained crush injury of middle finger, was admitted in hospital and while treating the same, it was found that petitioner is suffering from Affective Psychosis and thereupon he was invalided from service. It is also contended that the aforesaid disease was due to stress and strain thereby the petitioner is entitled for disability pension as per Rule 173 of the Pension Regulation for Army (hereinafter referred to as the "Regulation", for short). It is urged that as per Appendix-II, Rule 4, 7(a) and (b), petitioner having suffered from Affective Psychosis, was required to be extended benefit of disability pension, inasmuch as, opinion of the medical board to hold that the disease is not attributable to or aggravated due to military services, is not correct as medical board failed to give detail opinion so as to hold it to be a case of constitutional disorder. Referring to the rules as well as several judgments on the issue, the prayer of the learned Counsel for the petitioner is to accept the writ petition and grant the relief as prayed therein. The judgments so cited by learned Counsel for the petitioner would be referred and discussed in the latter part of this judgment.

4. Learned Counsel for the respondents, on the other hand, submits that the claim of the petitioner for grant of benefit of disability pension is not acceptable in view of the opinion of the medical board, It is a case where disease was not attributable to and aggravated due to the military services so as to attract provisions of Section 173 of the Regulation. It is further urged that Appendix-II, Rules 4, 7(a) and 7(b) are required to be read in totality and not in isolation so as to claim benefit of disability pension. Learned Counsel for the respondents submits that the petitioner has not even challenged the opinion of the medical board, thus in the absence of a challenge to the opinion of the medical board, the petitioner is not entitled to any relief. Referring to the prayer clause, it is specifically shown that there is no prayer in the prayer clause to the effect that the opinion of the medical board should be held to be improper, incorrect or invalid either due to the procedural irregularity or otherwise. Referring to judgments of the Hon'ble Apex Court, learned Counsel for the respondent submits that in the absence of a challenge to the opinion of medical board, the petitioner is not entitled to any relief.

5. I have considered the rival submissions of the parties and scanned the matter carefully.

6. The facts which not in dispute are that the petitioner was enrolled in Army on 24.12.1994 on finding fully fit and was not noted to have suffered

any disease. While the petitioner was under basic military training with Rajputana Rifles Regiment Centre, he was admitted in Army Hospital, Delhi

Cantt on 18th October, 1995 for psychiatric evaluation of his behaviour as it was observed to be abnormal. After various examinations and

investigations and after taking opinion of neurophysician, the petitioner was declared to suffering from Affective Psychosis. Prior to his admission in

Army Hospital, Delhi Cantt on 18.10.1995, the petitioner was earlier admitted to AH on 9.10.1995 where petitioner remained hospitalized till

14.10.1995 due to crush injury of middle finger. According to the statement of fact made in the writ petition specifically in para 2, petitioner fell ill

due to stress and strain of military services and was invalided from services, as other than this, the petitioner has not stated any other fact giving

reason to the disease resulting in petitioner's invalidation from service. In the background of the facts aforesaid, now the matter is required to be

looked into as to whether the petitioner is entitled for disability pension as per the provisions of the Regulation or not.

7. The case of the petitioner is that the disease of Affective Psychosis is due to stress and strain of military services, thus as per Rule 173 of the

Regulation, the matter is required to be examined regarding the claim of the petitioner. For ready reference, Regulation 173 is quoted hereunder:

Regulation - 173: Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on

account of disability which attributable to or aggravated by military service and is assessed at 20% or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix-II.

8. Bare perusal of the aforesaid Regulation reveals that disability pension would be granted to the individual on his invalided from service on

account of disability which is attributable to and aggravated by military service. For that purposes, Appendix-II attached to Regulation is quite

material. Part 4, of Appendix-II provides that the issue of entitlement would be decided based on evidence, direct and circumstantial and while

doing so, benefit of reasonable doubt will be given to the claimant. Paras 7(a) to (d) are also relevant and material, thus same are quoted hereunder

for ready reference:

(a) Cases, in which it is established that conditions of military service did not determined 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.

(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.

(d) In considering whether a peculiar disease is due to military service, it is necessary to relate the established facts, in the etiology of the disease

and of its normal development, to the effect that conditions of service i.e., exposure, stress, climate, etc. may have had on its manifestation. Regard

must also be had to the time factor.

9. According to learned Counsel for the petitioner, Para 7(b) of the Regulation has already been taken into consideration in various judgments and

based on said para, the benefit of disability pension was allowed. In that regard, learned Counsel for the petitioner first made a reference of the

judgment in the case of Tara Chand Jat v. Union of India and Ors. decided on 14.9.2001 in D.B. Civil Special Appeal No. 423/2001 reported in

2002 (5) WLC 107. According to learned Counsel for the petitioner, not only the issue involved in the present matter, but all the judgments on

subject matter have been taken into consideration by the Division Bench of this Court while accepting the appeal granting benefit of disability

pension to the appellant therein. Looking to the fact that much reliance has been placed on the judgment in the case of Tara Chand Jat (supra), I

am first considering the aforesaid judgment.

10. In the case of Tara Chand Jat (supra), the Division Bench of this Court considered the fact that the appellant therein was enrolled as Sepoy on 25th September, 1984 and thereafter on his reporting sick, he was ultimately admitted in Hospital wherein it was found that appellant therein was suffering from Schizophrenia and thereupon on 25th August, 1989, he was discharged from hospital. The appellant thereupon was discharged from service and benefit of invalid pension was declined therein. The Division Bench came to the conclusion that disease of Schizophrenia was attributable to or aggravated by military services, thus the appellant was entitled for disability pension. Perusal of said judgment shows that much stress has been given to Para 7(b) of Appendix-II of the Entitlement Rules and already taking note of the aforesaid provision and after considering other judgments, the Division Bench come to the conclusion that the appellant is entitled for the benefit of disability pension. Since there are references of various judgments of the High Courts as well as Hon"ble Supreme Court therein, thus those judgments are also relevant to be mentioned hereunder.

11. Division Bench in the case of Tara Chand Jat (supra) has firstly considered the case of Nemi Chand v. Union of India and Ors. reported in 2000(1) WLC 393 . The case therein was that Nemi Chand suffered disability of Sensory Neural Deafness (left ear). The aforesaid disability was found due to the bombardment during Pakistan war, therefore, Court came to the conclusion that disease was attributable to and aggravated due to military services. In case of Surendra Singh v. Union of India referred In the very same judgment, It was found that the petitioner therein sustained disease while he was deployed on Security duty in terrorist affected area in Punjab and therein It Was found that due to such deployment, petitioner sustained stress causing disease as noticed by the medical board. A reference of the case of Madan Singh Shekhawat Vs. Union of India and Others, is also given. The case therein was as to whether aft army personnel is entitled to disability pension while he suffered injury disease while on casual leave and taking into consideration that even leave period or journey fdf that purposes can be said to be a part of the duty, therefore, disability pension was allowed. The next case considered therein is Union of India (UOI) and Another Vs. Baljit Singh, therein the

grant of benefit of disability pension, as ordered by the High Court was upheld. The case of Ex-Sepoy Sahib Singh v. Union of India reported in

1999(5)SLR 562 has also been considered wherein disability pension was denied on account of personality disorder. Court came to the

Conclusion that the denial of disability pension treating it to be a case of constitutional nature of disease is not proper. Same way, in the case of

Bhag Singh v. Union of India and Ors. reported in 1996(4) R.S.J. 55 has been considered. Perusal of the judgments referred to above show that

in almost all cases, there was definite pleadings duly substantiated to the effect that disease was attributable to or aggravated due to the military,

services, may be suffering due to the bombardment or deputing the personnel in terrorist affected area etc. Therefore, on its own facts, the matter

is to be decided. It becomes necessary that While deciding the present matter, facts of this case are required to be taken into consideration more

and the judgments referred to above cannot be said to be a complete assistance having been decided largely on its own facts and otherwise the

facts therein show largely that the cases involved therein were proving disease to be attributable to or aggravated due to military services. On the

other hand, in the case of Subedar Gurdip Singh v. Union of India reported in 1997 (5) SLR 341, Division Bench of Punjab and Haryana High

Court came to the conclusion that once medical board reported it to be a case of constitutional disorder and not attributable to or aggravated due

to army service, the Court cannot substitute its own opinion for that of competent authority. Same way, in the case of Sepoy Mohinder Singh v.

Union of India and Ors. reported in 1999(4)SLR 50, Delhi High Court held that in a case where medical board found disability to be an organic

and constitutional disease, neither caused nor attributable to Army service, the claim for disability pension cannot be accepted. In the case of

Gopal Das Maheshwari v. Union of India and Ors. reported in 1998 (6) SLR 163, Madhya Pradesh High Court therein came to the conclusion

that the personnel having not fulfilled the requirement of Regulation 173 cannot claim benefit of disability pension. All the judgments referred to

above are otherwise discussed in the judgment of Tara Chand Jat (supra) and substance of those judgments are that the opinion of the medical

board cannot be substituted by the Court casually.

12. Learned Counsel for the petitioner further made emphasis on a recent judgment given by Division Bench of Jammu and Kashmir High Court in

the case of Ex. Sepoy Devinder Singh v. Union of India and Ors. reported in 2008 (1) SLR 19 . Referring to the aforesaid judgment, it is urged

that medical board having failed to give finding that disease could not be detected at the time of entering into service, presumption has to be drawn

that personnel contracted with disease while in service. In the aforesaid judgment also, the Division Bench of Jammu and Kashmir High Court has

made much stress on Para 7 (b) of Entitlement Rules forming part of Appendix-II. Referring to the judgment of the Hon'ble Apex Court in the

case of Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair , it was held that Ex-Sepoy is entitled for disability

pension and inasmuch as, the Hon'ble Apex Court in the case of S. Balachandra Nair (supra) had not considered Rule 7 of Appendix-II of the

Regulation, thus the judgment of the Hon'ble Apex Court in the case of Balachandra Nair was not applied.

13. Now, I consider the judgments cited by learned Counsel for the respondents. In the case of Union of India (UOI) and Others Vs. Dhir Singh

China, Colonel (Retd.), , the Hon'ble Apex Court held that if medical board has given opinion that disability is not attributable to or aggravated

due to military services, opinion having not assailed, becomes final and respondent is not entitled to get disability pension. Para 7 of the said

judgment, reads thus:

That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on

completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical

authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is noted a

dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration

is whether he was suffering on retirement, from a disability attributable to or aggravated by military service and recorded by service medical

authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was

suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of

Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by

military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can

derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted.

14. In view of the finding given in the aforesaid case, it becomes clear that if the finding of medical board is not challenged, the relief for disability pension cannot be granted.

15. In the case of S. Balachandra Nair (supra), the Hon''ble Apex Court considered the issue at length and it is after referring to the judgment of

the Hon''ble Apex Court in the case of Baljit Singh (supra), it was held that personnel was not entitled for disability pension. Aforesaid judgment of

the Hon''ble Apex Court was even considered by the Division Bench of Jammu and Kashmir and therein Division Bench came to the conclusion

that the Hon''ble Apex Court had not considered Rule 7 of the Appendix-II, thus the aforesaid judgment was not applied by the Division Bench.

Minute examination of the judgment in the case of S. Balachandra Nair (supra) reveals that in Para 10 specifically judgment of Baljit Singh (supra)

was referred and in the case of Baljit Singh (supra), the Hon''ble Apex Court considered Rule 7 of Appendix-II of the Regulation and after taking

note of Sub-rule (c) of Rule 7 of the Rule, it was held that in each case when disability pension is sought, it must be affirmatively established as to

whether injury sustained was due to military services or was attributable to or aggravated due to such services. The outcome of the reference of

Baljit Singh case (supra) is that when Hon''ble Apex Court in the case of S. Balchandra Nair (supra) has considered the case of Baljit Singh

(supra), then it cannot be said that there was no consideration of Rule 7 of Appendix-II of the Regulation as otherwise decided by Division Bench

of Jammu and Kashmir.

16. In view of the above, judgment in the case of S. Balachandra Nair (supra) and Baljit Singh (supra) becomes relevant and needs detail

discussion. In the case of Baljit Singh (supra), the Hon''ble Apex Court in Para 4

held that disability was not attributable to or aggravated due to military services, thus conclusion of the High Court was not found correct, however, looking to the facts and circumstances of the case, Court had not made interference in the Judgment of the High Court. Para 4 of the aforesaid judgment, reads thus:

He further contends that as per the medical report the injury was sustained by him while he was in service and that, therefore, it has been presumed

that it was during service and accordingly must be attributable to military service. On a consideration of the rules; we think that the contention of

Shri Malhotra merits acceptance. It is seen that various criterial have been prescribed in the guidelines under the Rules as to when the disease or

injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred

due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and

remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is

made amply clear from Clauses (a) to (d) of paragraph 7 which contemplates that in respect of a disease the Rules enumerated thereunder require

to be observed. Clause (c) provides that if a disease is accepted as having arisen in service, it must also be established that the conditions of

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

Unless these conditions are satisfied, it cannot be said that the substance of injury per se is on account of military service. In view of the report of

the medical board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though

sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must

be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to

invalidation for the military service.

Accordingly, we are of the view that the High Court was not totally correct in reaching that conclusion. However, having regard to the facts and

circumstances of this case, we do not think that it is an appropriate case for

interference.

17. Perusal of the aforesaid para reveals that Clause (a) to (d) of Rule 7 of Appendix-II of the Regulation were taken into consideration and

considering Clause (c) also the Hon''ble Apex Court come to the conclusion that unless the conditions as specified in Clause (c) are satisfied, one

would not be entitled for the benefit of disability pension. Sub-para (a) to (d) of para 7 of Appendix-II of the Regulation has already been quoted

in the present judgment, Inasmuch as, not only in the case of Tara Chand Jat (supra), but even the case decided by Division Bench of Jammu and

Kashmir in the case of Devendra Singh (supra) much emphasis has been made on Para 7(b) without taking note of other Rule 7(c) of Appendix-II

whereas rule was required to be seen in its totality and not in isolation by referring only Clause 7(b). In the case of Union of India v. Keshar Singh,

Appeal (Civil) No. 762/2001, judgment dated 20.4.2007 the Hon''ble Apex Court considered the same aspect in details and referring to Rule 7(c)

of Appendix-II order was passed.

18. Judgments referred by learned Counsel for the petitioner, is having reference of Rule 7(b) of Appendix-II only and based on aforesaid Rule,

benefit of disability pension was extended. Even judgment in the case of Tara Chand Jat (supra) as well as Division Bench's judgment of Jammu

and Kashmir in the case of Davendra Singh (supra) also laid great emphasis on the said sub-rule rather in Para 9. Division Bench of Jammu and

Kashmir High Court while considering the judgment of the Hon''ble Supreme Court in the case of S. Balachandra Nair (supra) had not relied upon

the judgment of the Hon''ble Apex Court as only Rule 2, 3 and 4 of entitlement rules were considered whereas looking to the judgment in the case

of S. Balachandra Nair, it comes out that judgment in the case of Baljit Singh (supra) is otherwise considered and referring to Rule 7(c), a definite

finding has been given to the effect that unless affirmatively it is established that disease is attributable to or aggravated by military services, the

benefit of disability pension cannot be given. If Para 7(b) and 7(c) are looked into, then it becomes clear that harmonious consideration of the

aforesaid rule is that what has been held by the Hon''ble Apex Court in Para 4 of Baljit Singh scase (supra) and accordingly, conclusion of the

issue involved in the present matter is that looking to Para 7(c), it is necessary to

be established that conditions of military service determined or contributed onset of the disease and the conditions were due to circumstances of military service. Hence, I conclude this issue with an opinion that reference of Para 7(b) in isolation by the Division Bench of this Court as well as Division Bench of Jammu and Kashmir was not proper rather has to be held to be per incuriam in view of the judgment of the Hon''ble Apex Court in the case of Baljit Singh (supra). In view of the judgments of Baljit Singh as otherwise referred in the case of S. Balachandra Nair (supra), it is necessary to draw an affirmative conclusion that disease is attributable to or aggravated due to military services for grant of disability pension and thereby Para 7(b) of the Regulation cannot be looked into in isolation, more so when words issued therein are ""ordinarily be deemed to have arisen in service"". The use of ""ordinarily"" and ""deemed"" cannot be taken as mandatory.

19. After coming to the conclusions drawn above, in the present case, not only that petitioner has not challenged the opinion of the medical board as there exists no prayer to declare medical board's opinion to be improper, incorrect and invalid and thereby without there being a challenge to the opinion of the medical board, the entire claim made by the petitioner can be accepted in view of the judgment of the Hon''ble Apex Court in the case of Dhir Singh China (supra) wherein the Hon''ble Apex Court came to the conclusion that if opinion of the medical board is not assailed, it becomes final and a personnel cannot claim disability pension. The claim of the petitioner cannot be allowed on the aforesaid ground alone as there exists no prayer to treat the opinion or finding of the medical board to be invalid for grant of the benefit of disability pension as claimed by the petitioner. Since the matter has further been examined in the light of the arguments, thus even if, the facts of the case is taken into consideration apart from the objections dealt with in the light of the judgment of the Hon''ble Apex Court in the case of Dhir Singh China (supra), then also it is not bome out from the fact that the petitioner is entitled for disability pension. Perusal of the entire writ petition reveals that other than narration of the fact that disease is attributable to or aggravated due to stress and strain out of the military services, nothing is there to substantiate such facts.

The petitioner is not stated as to how he sustained stress and strain due to

military service as in order cases the injury, stress and strain was either due to bombardment or deputing a personnel in a terrorist affected area, but such facts are missing in the present case, therefore, there is nothing on record to substantiate the fact that disability was due to stress and strain out of the military service, which is required to be given in view of the fact that medical board's report is otherwise. Once a conclusive opinion was given by the medical board, this Court is not having authority to substitute the technical and expert opinion, unless there is a cogent material to prove otherwise. Since in this case other than narration of fact regarding stress and strain due to military service, there is nothing on record to substantiate the same, hence, in the absence of such material, this Court cannot substitute the opinion of the medical board. In the case of S. Balachandra Nair (supra), the Hon''ble Apex Court has also held that the opinion of the medical board, is an opinion of expert body, the High Court was held not justified to brush aside the same. In view of the authoritative pronouncement of the Hon''ble Apex Court, at least this Court is not having jurisdiction to say otherwise and thereby the judgment of Jammu and Kashmir High Court in the case of Davendra Singh (supra) wherein Division Bench has refused to apply the judgment of the Hon''ble Apex Court in the case of S. Balachandra Nair (supra) cannot be applied. In the case of S. Balachandra Nair (supra), a reference of Baljit Singh case (supra) is given and where Rule 7 of Appendix II is taken into consideration, then the judgment of Division Bench of Jammu and Kashmir cannot be applied herein rather in view of the judgment of the Hon''ble Apex Court in the case of S. Balachandra Nair (supra) and Baljit Singh (supra), this Court is not having jurisdiction to set aside the opinion of medical board lightly more so when literally looking to the prayer clause, opinion of the medical board is not under challenge rather the complete medical board report itself has been submitted by the respondents and not by the petitioner, therefore, even there was no intention of the petitioner to challenge the opinion of the medical board otherwise the opinion of the medical board would have been made as part of the writ petition itself even by seeking amendment. Hence, even in view of the judgment of the Hon''ble Apex Court In the case of Dhir Singh China (supra), the prayer of the petitioner cannot be accepted in the absence of challenge to the

medical board's opinion. It is otherwise a fact that even though the issue in regard to the challenge to the medical board's opinion has also been considered In the light of the rules referred to above.

20. In view of the discussion made above, I do not find any ground to accept the prayer made by the petitioner in the writ petition rather in view of

the judgments of the Hon''ble Apex Court in the case of S. Balachandra Nair (supra), Baljit Singh (supra) and In the case of Union of India v.

Keshar Singh (supra), apart from the judgment of the Hon''ble Apex Court In Dhlr Singh China (supra), the writ petition deserves to be dismissed,

hence, the same is, accordingly, dismissed with no order as to costs.