

(1999) 03 DEL CK 0022
In the Delhi High Court
Case No : CW.No.3594 of 1998

Corporal Satbir Singh (Ex.)	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Citation : (1999) 2 AD 295

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. V.P.S. Raghav, for the Appellant; Mr. A.K. Bhardwaj, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner has prayed for the following reliefs:-

"It is, Therefore, most humbly prayed that this Hon"ble Court may kindly be pleased to:-

i) Issue appropriate writ/directions/orders in favor of the petitioner and against the respondents for quashing the impugned decision of the respondents whereby the petitioner was denied his disability pension which was duly recommended by the Medical Board at the time of invaliding out the petitioner from the service on 08.9.1995.

ii) To direct the respondents so as to reconsider their recommendations with regard to admissibility of Medical Pension to the petitioner considering the invaliding disease on account of which the petitioner suffered disability was attributable to the service and also was aggravated by the service keeping in view the nature of duties of the petitioner."

2. The facts necessary for the disposal of the writ petition can be noticed in the following terms:

On the 11th of October, 1984, the petitioner was enrolled in the Indian Air Force as an airman. He was medically found fit. His character had been assessed as an

exemplary and his proficiency in professional trade had been assessed to be exceptional. In 1992, he had some ailment referring to sleeplessness. He was given treatment and he was again serving. On the 25th of February, 1994, he was posted at Air Force Station Yelhanka. On the 8th of September, 1995, he was medically boarded out of service. On the 2nd of July, 1996, the Air Force Record Office sent the papers to the authority concerned for payment of disability pension. By order dated 28.10.1996, the CCDA (Pension), Allahabad decided that the petitioner was not entitled to disability pension as he was not suffering from any ailment which could be attributed to military service, nor did it existed before or during military service. It had also been noted that the ailment was no aggravated by military service. The Medical Board gave its report on the 8th of July, 1995. In column No.3D, it is stated "constitutional disease not connected with service".

3. The Medical Board has not given any reasons and it has been pointed out time and again by this Court and by the Supreme Court that there must be reasoning on record to come to the conclusion that the ailment was not attributable to military service. The disability had been fixed at 60%. It is not disputed that the petitioner's record of service had been very exemplary and exceptional, as I noticed above.

4. The learned counsel for the petitioner submitted that the respondents had not considered the matter in its proper perspective and the ailment suffered by the petitioner was certainly attributable to the military service, for the petitioner had been working without any complaint whatsoever for eight years or more.

5. The learned counsel for the petitioner submitted that the petitioner sent an appeal to the appellate authority, the Ministry of defense, on the 17th of January, 1997 and the Ministry had not cared to disposed of the appeal, and Therefore, the petitioner was forced to file this writ petition on the 25th of July, 1998.

6. The learned counsel for the respondents submitted that the ailment suffered by the petitioner was not attributable to the military service. The Medical Board had expressed its opinion:-

"This 27 Yrs old Cpl, having 10 Yrs of service, is an old case of unspecified psychosis. The onset was in 1992, _____(not legible) sleeplessness, restlessness, and _____(not legible)_____ ETCs and drugs. This yr he had an _____ psychotic breakdown for which he had to be hospitalised.

In spite of treatment, he has residual psychotic creatures like effective blunting, apathy, social withdrawal and loss of insight. He has also run away from the ward. Keeping the foregoing in mind, it is not felt that he is not fit for further military duties.

Recommended invalidment in Med _at EEE(pay)."

7. The Medical Board is expected, in law, to give its opinion so that Court may

appreciate the reasoning given by the Medical Board. The word "constitutional" is general in nature and it cannot be said that because the Board has used word "constitutional" that is final on the point. The Medical Board had not stated with reference to the condition of the petitioner when he had been serving the Air Force for 11 years and that the ailment was not due to military service. The CCDA, Allahabad had projected the issue in a very cavalier fashion.

8. The learned counsel for the petitioner submitted that judgment of the Supreme Court in "Union of India & Others Vs. Shri Baljit Singh" (Civil Appeal No.13272 of 1996 decided on 11.10.1996) would cover this case and the learned counsel relied upon the following observation made by the Supreme Court:-

"This is made amply clear from clauses (a) to (d) of paragraph 7 which contemplates that in respect of a disease the Rules enumerated there under require to be observed. Cl.(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 sustenance 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."

9. The Supreme Court has ruled that in each case it must be established whether the ailment was due to military service. That has not been done in this case. Therefore, the order passed by the CCDA (Pension), Allahabad cannot be sustained.

10. The learned counsel for the respondents submitted that the appeal filed by the petitioner has not been disposed of and the petitioner can approach this Court only after the appeal is disposed of.

11. I am unable to agree with the contention. The existence of an alternative remedy or availing of an alternative remedy would only be taken into consideration by this Court while exercising its discretion. In a matter like this the Ministry of defense cannot take its own time. On the facts and circumstance of this case, the fact that the appeal is pending before the Ministry of defense cannot be put against the petitioner. The writ petition stands allowed.

12. The respondents are directed to pay the disability pension to the petitioner in accordance with the rules on or before the 31st of May, 1999.

13. There shall be no order as to costs.