

(1999) 05 DEL CK 0089

In the Delhi High Court

Case No : C.W. No. 1474 of 1995 and C.M. No. 1311 of 1998

Satpal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 4 AD 321 : (1999) 79 DLT 576 : (1999) 122 PLR 18

Hon'ble Judges : Usha Mehra, J;S.N. Kapoor, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Suhail Dutt, for the Respondent

Final Decision : Allowed

Judgement

Usha Mehra, J.—The petitioner was enrolled as a combatant soldier in the Army on 9th June, 1982. At the time of enrolment, complete medical checkup was done of the petitioner as prescribed under the military rules. At the time of his induction in the Army, he was not suffering from any kind of disease. No remarks or note to that effect was given by the Medical Board at the time of his entering the service.

2. The petitioner after enrolment underwent training and other activities in the peace as well as in the forward areas. In the year 1990 petitioner developed mental problem as a result of which he was admitted in the Military Hospital. On account of his mental ailment he was placed in permanent low medical category "EEE". After the petitioner was placed in the permanent low medical category he was recommended for Medical Board. The Medical Board which was constituted assessed the disability element of the petitioner above 20% and recommended invalidating out of service the petitioner. The Commanding Officer of the petitioner sanctioned the discharge as well as recommended disability pension w.e.f. 6th July, 1991. Duly sanctioned pension claim was forwarded to the Officer in charge Sikh Regiment, Ramgarh Cantt. (Bihar) for disbursing the pension claim. However, respondent No. 2 the Controller of defense Accounts (Pension),

Allahabad rejected the military pension claim of the petitioner on the ground that disability of the petitioner on account of which he was invalided out of service was neither attributable to service nor aggravated due to service. Respondent No. 2 rejected the claim vide letter dated 16th March, 1992 which was informed to the petitioner vide letter dated 30th March, 1992 and 22nd July, 1992 by respondent No. 3. The petitioner filed appeal which was also rejected. The representation made by him also stood rejected.

3. It is in this background that the petitioner approached this Court seeking direction against the respondents for grant of disability pension w.e.f. the date of his discharge i.e. 6th July, 1991.

4. Respondents in its reply has taken the plea that as per the record the petitioner suffered from psychiatric disorder way back in October, 1982. He was admitted in the Military Hospital, Ramgarh Cantt for treatment of his disease called "AGNEVUL GARIS" for which he took the treatment from 8th October, 1982 to 30th October, 1982. He suffered from this disease as he got worried about his married sister being cheated by her husband. Again he suffered from "MYALGIA" from 25th August, 1989 to 1st September, 1989. He had to be admitted in Ramgarh Hospital on 25th May, 1990 because he suffered from "NEUROSIS". He was, thereafter, transferred to Military Hospital, Danapur Cantt. There he remained under treatment from 12th June, 1990 to 25th September, 1990. Due to his illness from a disease called SCHIZOPHRENIA, he was admitted in the Base Hospital in Delhi Cantt on 18th October, 1990 and was thereafter discharged on 27th October, 1990. He was again admitted in the Army Hospital, Delhi Cantt on 13th November, 1990 to 2nd February, 1991 and from 30th March, 1991 to 6th July, 1991. He was recommended to be invalided out of service. The Invaliding Medical Board, Delhi examined the petitioner on 12th June, 1991 and opined that the disease from which he suffered i.e. SCHIZOPHRENIA was neither attributable to nor aggravated by the military service. The Medical Board, however, assessed his disability at 40% for two years.

5. The short point for consideration is whether the disease from which the petitioner suffered i.e. "Schizophrenia" was due to his military service or got aggravated because of his service or was it constitutional disorder? To answer this question the respondents have heavily relied on the Medical Board opinion which says this illness was due to constitutional disorder. Counsel for the petitioner says this was not a constitutional disease. Moreover to arrive at this conclusion no reasons have been assigned by the Medical Board. Reference has been made to Column No. 2 wherein the Board was required to state fully the reasons for arriving at this opinion. But the perusal of Column No. 2(a) of the Medical Board's record shows that no reasons have been assigned by the Board. Column No. 2(a) reads as under:

2(a). In respect of each disability the Medical Board on the evidence before it will express its view as to whether --

- (i) it is attributable to service during peace or under field service conditions; or
- (ii) it has been aggravated thereby and remains so; or (iii) it is not connected with service.

The Board should state fully the reasons in regard to each disability on which its opinion is based. (underlining is mine)

Disability A B C SCHIZOPHRENIA NO NO YES ICD-295 (b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability.

6. It was incumbent on the Medical Board to state fully the reasons for arriving at this conclusion that the disease was not attributable to service nor aggravated because of his service. Except saying "No", "No" and "Yes", no reason whatsoever assigned in the report. Question is whether on the basis of such medical report could the petitioner be deprived of the pension? Answer would be in the negative.

7. On the basis of this vague Medical report disability pension claimed by the petitioner could not have been rejected by the Controller of defense Accounts, Allahabad. On scrutiny of the record, we found that at the relevant time the petitioner was posted in the field area of the State of Jammu & Kashmir. It was a non-family station. Due to anxiety he suffered from Neurosis and subsequently of Schizophrenia and was brought to Military Hospital Ramgarh Cantt. Mental condition of the petitioner got aggravated due to the prevailing circumstances in the State of Jammu & Kashmir and his being posted in the field area. The medical report does not give any indication as to how the Medical Board arrived at this conclusion. In the absence of any material presumption ought to have been drawn that petitioner suffered from mental ailment due to his service and it got aggravated due to service.

8. To support this conclusion reference can be made to para 173 of the Army Regulations which deals with the primary conditions for the grant of disability pension and the same is reproduced as under:

Para-173. Primary conditions for the grant of disability pension

"Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability "which is attributable to or aggravated by military service and is assessed at 20 per cent or over.

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

Appendix-11 of Pension Regulations deals with entitlement of the disability pension and as to whom these rules will apply. Para 7 of the Rules reads as under:

7. In respect of diseases, the following rules will be observed --

(a) Cases, in which it is established that the 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.

(b) A disease which was 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 condition 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 particular disease is due to the military service it is necessary to relate the established facts in the etiology of the disease, and of the normal development to the effect that conditions of service e.g., exposure, stress, climate etc. may have had on its manifestation. Regard must also be had to the time factor.

9. Reading of Sub-rule (b) of Rule 7 would show that if an individual is discharged, the presumption would be that the disease from which he has been discharged had arisen in service. The exception is if the note had been appended at the time of accepting his service or if the medical opinion for the reasons to be recorded indicated that the disease could not have been detected at the time of medical examination i.e. prior to acceptance in service.

10. Perusal of the record shows that petitioner when joined service as combatant soldier on 9th June, 1982 was not suffering from any disease, what to talk of mental disorder. That is the reason no note of any kind either of mental ailment or of physical ailment was appended by the Medical Board who examined the petitioner at the time of enrolment. A perusal of the counter affidavit filed by respondent shows that petitioner was hospitalised from 8.10.82 to 30.10.82 for a disease "AGNEVUL GARIS". In the Medical dictionaries there is no disease by the name of "AGNEVUL GARIS". It appears that the name of disease has been wrongly typed by the respondent in its counter affidavit. It could be "ACNEVUL GARIS" which means skin disease. This disease by no means can be associated with mental disorder. Having suffered from some kind of skin problem could not have disentitled the petitioner of his pension. So far as the disease "MYALGIA" it again does not relate to mental ailment. "MYALGIA" is muscular pain. As regard "NEUROSIS", from which petitioner allegedly suffered is associated with anxiety. In the modern day world "Neurosis" i.e. anxiety is a very common disease. It is not uncommon that people suffer from anxiety. But that does not mean they are

mental cases or mental patient. Moreover, during that period the petitioner was posted in the field area in a non-family station in the State of Jammu & Kashmir. Therefore, if he suffered from anxiety i.e. "Neurosis" it does not mean he suffered from constitutional disorder. Serious disease from which the petitioner suffered in October, 1990 was Schizophrenia. Butterworths Medico-Legal Encyclopedia by J.K. Mason and R.A. McCall-Smith explains what "Schizophrenia" is. According to it "Schizophrenia is a form of effective psychosis which is characterised by a disorder of thinking manifested by distorted perception; the mind of the schizophrenic is dominated by hallucinations, illusions and delusions. The disease usually begins to show itself around the age of 20 years and its cause is unknown. Such a disease can be associated with mental disorder. Petitioner joined Army service in June, 1982. He suffered from the disease of "Schizophrenia" in October, 1990. If it had been a constitutional disorder it would not have waited for ten long years to manifest. "Schizophrenia" would have manifested and could have been detected by the doctors who examined him at the time of enrolment. If it has been a genetic disorder, it could have been detected immediately. But that is not the case set up by the respondent.

11. What sort of Schizophrenia from which the petitioner suffered has also not been indicated by the Medical Board. Hallucinations from which such patient suffers are of three types namely; (i) Auditory, (ii) Visual or (iii) Somatosensory. Auditory Schizophrenia occurs when a person imagines that somebody is talking against him. Visual Schizophrenia is when he imagines something like seeing ghosts etc. Nothing has been said by the respondent as to from which category of Schizophrenia the petitioner suffered. From whatever category of "Schizophrenia" the petitioner suffered it would have been apparent when he was medically examined in June, 1982 or at any time thereafter. But none of the Medical Boards prior to October, 1990 declared that the petitioner was suffering from "Schizophrenia" or any mental disorder. Therefore, it would not be correct on the part of respondent to say that petitioner suffered from constitutional disorder. Constitutional disorder would have in some form or the other must have manifested itself. But it did not till October, 1990. Therefore, the rejection on the ground of constitutional disorder cannot be appreciated.

12. Mr. S.M. Hooda's contention has a force when he urged that in the year 1990 there was insurgency in the State of Jammu & Kashmir. The petitioner being posted in the forward area of that State due to anxiety might have suffered from "Schizophrenia". Since he had already suffered from Neurosis earlier and being posted in the forward area anxiety got aggravated and became a case of schizophrenic. For this argument of Mr. Hooda, Counsel for the respondent had no answer. He could not deny the fact that the petitioner was posted during the relevant time in the forwarding area of the State of Jammu & Kashmir. He also could not contradict the fact that it was while posted in the field area that the petitioner suffered from Neurosis. Therefore, it cannot be ruled out that Schizophrenia from which the petitioner suffered was a consequence of Neurosis. As per respondent's own showing petitioner developed psychiatric breakdown in

June, 1990 when he started feeling of sadness, fear from unknown, lack of concentration, loss of interest in work etc. He showed depressive features while posted in the field area of the State of Jammu & Kashmir. This ultimately led him to be schizophrenic. Therefore, it would not be correct to say that the disease on account of which petitioner was invalided out of service was not attributable to service nor aggravated because of his service. In fact the presumption ought to have been drawn as per Sub-rule (b) of Rule 7 by the respondent. On account of his service presumption can be drawn that the petitioner suffered from this disease on account of his military service and it aggravated by military service. Instead of raising the presumption as is required to be raised under Sub-rule (b) of Rule 7, the Controller of defense Accounts rejected the disability pension without any reason and without appreciating the facts of this case. Admittedly, the onset of the disease was during the course of service. There was no reason for Controller of defense Accounts not to accept the recommendation of the Commanding Officer, which in this case was made to enable the petitioner to get the disability pension. The Commanding Officer of the petitioner sanctioned the disability pension w.e.f. 6th July, 1991. Duly sanctioned case was forwarded to the respondent No. 2 i.e. Controller of defense Accounts (Pension), Dropdi Ghaat, Allahabad which was in consonance with the presumption which is to be raised under Sub-rule (b) of Rule 7, which the respondent No. 2 failed to do without any reason.

13. For the reasons stated above, the impugned order is quashed with special cost of Rs. 5,000/- in favor of the petitioner. The writ petition is accordingly allowed. Petitioner is entitled to disability pension w.e.f. 6th July, 1991 as recommended by the Commanding Officer at the assessed rate of 40%. This percentage was assessed for two years. It is liable to be varied thereafter only in accordance with the relevant rules as and when there is re-assessment by Medical Board. Arrears of disability pension will be worked out and paid to the petitioner within a period of two months.