

(2002) 03 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6941 of 2000

Sub Lieutenant Chaman Azhar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Citation : (2002) 3 MPLJ 426

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : K.C. Ghildiyal, for the Appellant; R.S. Patel, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—The Petitioner claims the disability pension on account of onset and aggravation of "schizophrenia" while he was in service of Indian Navy.

2. The facts lie in narrow compass. Petitioner was selected as commissioned officer; he appeared in the examination of 1993. Petitioner undertook pre-commission training at National Defense Academy in Khadakwasla; he passed out from the academy in May, 1996 he was granted commissioning as an officer on successful completion of pre-commission training. Petitioner first was posted to I.N.S. Jyoti and later on I.N.S. Khukri on 21st January, 1999. After joining at the Ship INS Khukri, Petitioner participated in the exercise spring EX 99 held between 3-3-1999 to 12-3-1999. On 15-3-1999 the Petitioner was referred to the Naval Hospital; on 20th April 1999 the Petitioner was further referred to Command Hospital (Southern Command) Pune where he was kept till mid of July, 1999; he was transferred to I.N.H.S. Kalyani. Medical authority opined that the officer was found behaving abnormally ever since the ship returned after attending spring Ex 99 from Mumbai to Visakhapatnam. He had been noted to be quieter, exhibiting strange and perplexing behaviour. The Commanding Officer had noted him to be "frozen into silent stillness" and "bouts of stony silence". An invaliding medical board was held; on the recommendation of Board the

Petitioner was released from navy on medical ground with effect from 30th September, 1999 as per order Annexure P/2 on account of disease diagnosed as "Schizophrenia" LCD. No. 295. Petitioner claimed for disability pension as per pension Regulation; he wrote the letter P/3 and P/4. Petitioner claims that disease in question is attributable to or aggravated by military service and it was assessed at 20% or above. Thus, he was entitled to disability pension. Petitioner claims that as per pension Regulation, it has to be presumed that disability arose due to service. Petitioner submits that when the Petitioner was enrolled for navy service, no such disease was noticed. Medical board had not mentioned that disease could not have been noticed at the time of acceptance of the Petitioner for the Indian Navy Service; Petitioner developed the disease due to service conditions. Petitioner has been rendered jobless in prime of his youth. Petitioner had put in about three years of service; the disease was aggravated due to service conditions.

3. In the return, Respondents contend that Petitioner was granted PC in Navy in July, 1993 and retired on 30th September, 1999; review medical board was held on 21-7-1999; review medical board recommended the ID neither attributable to nor aggravated by naval service. It was constitutional in nature and assessed at 60% for five years as per medical report Annexure R/I. accordingly, the Petitioner was invalided out of naval service; the disease is constitutional disorder and not connected with service. It is denied that disease had developed due to service condition only. The rejection of the disability pension as per order Annexure R/2 passed on 15th January, 2001 is proper.

4. Learned Counsel for Petitioner submits that at the time when Petitioner joined the Indian Navy he was hale and hearty; no note was made that Petitioner was suffering with schizophrenia nor it was so mentioned that it could not be detected at the relevant time. Counsel for the Petitioner submits that disease was aggravated by the service conditions and it occurred after exercise which had aggravated the disease. Thus, Petitioner ought to have been granted disability pension in accordance with the pension Regulations.

5. Learned Counsel for Respondents submits that disease is constitutional in nature and medical board has opined that psychiatric disorder is not connected with service. Thus, the Petitioner is not entitled for disability pension as per Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982.

6. The Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 provide under Rule 4 that invaliding from service is a necessary condition for grant of a disability pension. It is not in dispute that Petitioner was invalided out of service and no alternative employment suitable to his low medical category could be provided.

7. The approach to the question of entitlement to Casualty Pensionary Awards, on the ground of disabilities are based on certain presumptions which have been

provided under Rule 5. Rule 5 runs as follows:

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service:

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

8. There is a presumption under Rule 5(a) that a member is presumed to be in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. There is further presumption in Rule 5(b) that in the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service. Thus, on the basis of this presumption, case of an incumbent has to be considered. It is provided in Rule 6 that disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that it is attributable to military service and has been and remains aggravated thereby. This will also include the precipitating/hastening of the onset of disability. Rule 6(a) is quoted below:-

6. Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:- (a) the disablement is due to a wound, injury or disease which -

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/hastening of the onset of a disability.

9. Rule 9 deals with Onus of proof. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases. Rule 9 is quoted below:-

"The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

10. It is not in dispute that Petitioner was in afloat service. Rule 14 as inserted on 20th June, 1996 with retrospective effect from the date of promulgation of the Entitlement Rules, 1982 provides as under:

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

(a) For acceptance of a disease as attributable to Military service, the following two conditions must be satisfied simultaneously:

(i) That the disease has arisen during the period of Military service; and

(ii) That the disease has been caused by the conditions of employment in Military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case, where it is established that the conditions of military service did not contribute to the onset or adversely affect the course of disease, entitlement for casualty pensionary award will not be conceded, even if the disease has arisen during service.

(c) 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 course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service.

11. As per Rule 14, it is necessary to establish that conditions of military service did not contribute to the onset or adversely affect the course of disease, the cases in which it is established that condition of military service did not determine or contribute to the onset of disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation under Clause (c) of Rule 14. In case of constitutional diseases as per Clause (d) of Rule 14 which are detected after the individual has joined service, entitlement to disability pension can be conceded if it is established that the course of such disease was adversely affected due to factors related to conditions of military service.

12. In Price's Text Book of the Practice of Medicine, learned author Price has discussed the aetiology of "Schizophrenia" as under:

The role of genetics is undoubtedly important, but recent observations suggest that although genetic factors may be necessary they are not always sufficient for the occurrence of schizophrenic illness; environmental influences can also play their part in the casual chain. Recent mental stress may sometimes be the starting point of an attack, but in a considerable proportion of these cases the reported overwork, disappointment in love or other painful experience, is found

to have been a product of the already existing illness, or the last of a long series of disturbing events. No recent or remote experience is ever sufficient to account for the illness without regard to intrinsic causes. No matter how searchingly the patient's life be resurrected and analyzed, it is scarcely ever possible to discover that anything happened to him which would have led to his adopting a schizophrenic way of shunning daily life unless he had been somehow disposed to it from the beginning; although, of course, much may have happened to him that has strengthened and fostered the disposition.

13. In Text Book of Medicine by Rustom Jal Vakil disease "Schizophrenia" has been discussed as under:

Aetiology: Heredity is considered an important factor in the aetiology of the disease. Specialists in genetics have discovered significant differences in the incidence of the illness in monozygotic and dizygotic twins. The nature of genetic transmission is however not clear. Individuals with asthenic builds, thin, tall and wiry frames and with a tendency to be shy, reserved and withdrawn are particularly prone schizophrenia. The vast majority of individuals with such constitutions are usually well adjusted, but if they prove incapable of standing upto the stresses and strains of life, they tend to develop a schizophrenic type of psychosis. A tendency to withdraw from social and emotional contacts with people and an increasing tendency to withdraw from one's environment are often present long before the actual onset of the illness.

Intensive biochemical studies have revealed numerous abnormalities, including disturbances of protein and carbohydrate metabolisms, enzyme reactions, abnormalities or urine and cerebrospinal fluid and the presence of so-called serum toxins (teraxin). The exact aetiological significance of such changes has however not been elucidated so far. Some consider schizophrenia as an auto immune disorder. This too remains unproved.

14. It is apparent from the above medical text that stress may be one of the factor to aggravate or develop psychiatric disorder in question. In Harrison's Principles of Internal Medicine Vol. 2, schizophrenia disorders have been discussed; relevant part is quoted below:

The stress-diathesis model hypothesizes that there is vulnerability which is inherited in schizophrenia-prone individuals. These vulnerable individuals are at high risk for developing schizophrenia under certain stressful circumstances.

15. Vulnerability could be biological or environmental when acted upon by some stress which may be biological or environmental ultimately developed clinical symptoms of schizophrenia. Schizophrenia is a heterogeneous disorder. It can also not be doubted that environmental factors also play vital role in schizophrenia.

16. In the instant case, the Petitioner was having two years of service when he was found behaving abnormally ever since the ship returned after attending

spring Ex 99 from Mumbai to Visakhapatnam held in March, 1999. For the first time abnormal behaviour was noticed in entire service career. Thus stress of attending spring EX 99 clearly told upon Petitioner and precipitated/aggravated schizophrenia. These facts that for the first time it was detected on ship finds place in summary and opinion of Classified Specialist (Psychiatry) at Command Hospital, Pune (Annexure P/1). It is further mentioned in the opinion that there is no past history of head injury, STD, epilepsy and mental disorder. Petitioner was educated upto class XIIth with 70% marks; joined NDA (1993-1996) on own motivation. He was diagnosed as a case of schizophrenia and was ultimately invalided. It is also not in dispute that Petitioner entered in the service he was medically examined and no such psychiatric disorder was detected. Learned author Price in Text Book of Practice in Medicine has observed that the role of genetics is undoubtedly important, but recent observations suggest that although genetic factors may be necessary they are not always sufficient for the occurrence of a schizophrenic illness; environmental influences can also play their part in the causal chain. It is further observed by the learned author that recent mental stress may sometimes be the starting point of an attack, but in a considerable proportion of these cases the reported overwork, disappointment in love or other painful experience is found to have been a product of already existing illness, or the last of a long series of disturbing events.

17. As per Rule 5(a) a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. The mental condition was fit when Petitioner entered service. As per Rule 5(b) there is presumption that deterioration took place due to service. The stress is attributable to military service and under Sub-clause (ii) of Clause (a) of Rule 6, disability shall be accepted as due to military service even if it existed before or arose during military service and remains aggravated thereby. The aforesaid provision further include the precipitating/hastening of the onset of a disability. It is not in dispute that for the first time precipitating/hastening took place during service when Petitioner was on ship. Rule 9 further protects the Petitioner inasmuch as it provides that claimant shall not be called upon to prove the conditions of entitlement. He is entitled to benefit of reasonable doubt and it has to be given more liberally as the claimant was in afloat service case. This liberal benefit is provided under Rule 9.

18. Clause (b) of Rule 14 as inserted in the year 1996 quoted above, provides that medical authority has to state the reason why such mental disorder could not be detected on medical examination prior to acceptance for service; in case medical authority has given the reason, it will not be deemed to have arisen during service. It is also not the finding that military service did not adversely affect the cause of disease; thus entitlement for pensionary benefit ought to have been conceded. It is only in such cases where it is established that condition of military service did not contribute to the onset or adversely affect the course of disease, entitlement for casualty pensionary award will not be conceded. Clause (c) of Rule 4 also comes to the rescue of the Petitioner as

conditions exist which have aggravated the disease. Thus, it is a case where it is established that subsequent course of the disease was influenced by the service. Thus, case of the Petitioner will fall for acceptance on the basis of aggravation. Under Clause (d) of Rule 14 even when a constitutional disease is adversely affected due to the factors related to the condition of military service; one is entitled to pensionary awards. I am of the opinion that the facts and circumstances of the case clearly indicate that schizophrenia was precipitated/aggravated by the conditions of naval service. Thus, rejection of Petitioner's application is improper.

19. A single bench of this Court in W.P. No. 1731/1995 (Ex. Naik Shyam Sunder Prasad v. Union of India and Ors. considered the case of brain tumour and held in para 7 and 8 as under:

Admittedly, the Petitioner suffered the disability while he was performing active duties. There is nothing in the proceedings of the Medical Board (Annexure P/I) that the disease of the Petitioner could not have been detected at the time of his entrance medical test, this indicates that the Petitioner was not suffering from any disease or disability at the time of recruitment to the Indian Army. The case of the Petitioner is squarely covered by Rule 7(b) of the Pension Regulations. In an identical case a Division Bench of Punjab and Haryana High Court in Surjit Singh v. Union of India and Anr. 1994 AISL (2)

Journal 32, has observed:

Disability pension shall be payable to army men irrespective of whether disease occurred during duty or off duty so long as disease occurred while on rolls of Army.

20. Another single bench of this Court in WP 3175/99 (Ex. Sepoy Rajesh Kumar Upadhyay v. Union of India and Ors. considered the grant of pensionary awards in the case of non organic psychosis. Incumbent was invalided out of service on account of low medical category "EEE" (Psychological). Clause 7 came to be considered; this Court took the view that legal fiction come to the rescue of the Petitioner; in para 9 following observations were made:

9. Neither on principle nor on precedent, I am inclined to accept the submission of Mrs. Nair. In my opinion Clause 7(b) of Appendix II creates a legal fiction and the purpose of the legal fiction is that the disease, which has led to discharge of an individual will be deemed to have been arisen in service, in the absence of the same being mentioned at the time of Petitioner's acceptance to military service or in the absence of any note by the Medical Board that the disease could not have been detected prior to acceptance for service. Condition precedent for application of legal fiction is satisfied in the present case whereas conditions which are necessary to bring out the case from the net of legal fiction do not exist. Petitioner has been discharged from service on account of the disease which has been diagnosed as "non organic psychosis". Nothing has been placed on record to show that any note of the disease was made at the time of

acceptance of the Petitioner for military service. Further medical Board has not stated that the disease could not have been detected on examination prior to acceptance for service. Natural corollary of the legal fiction in my considered opinion is that the disease has arisen in service.

21. The decision in Rohini Prasad Lal Bihari Ram Vs. Union of India (UOI) and Others, relied on by Respondents was based on consideration of the Pension Regulations for Army, 1961; Regulations 48, 173, 185 were considered as also the Entitlement Rules 2, 3 and 4. It was a case of schizophrenia. This Court held that schizophrenia is a type of mental illness. In that case there was categorical finding by Medical Board which opined that disease was not due to stress and was not attributed to military service or aggravated by military service. The cause of the disease was constitutional unconnected with the service condition. The decision of the Medical Board was accepted in the facts of that case. In that case the incumbent was not in field or afloat service.

22. Learned Counsel for Respondents has also pressed into service a decision of High Court of Allahabad in Smt. Kanchan Mala Srivastava and Ors. v. Union of India and Ors. 2001(1) L.L.N. 738 in which the incumbent was in the military service; he was invalided out of service on account of schizophrenia. It was found on facts that in the accident injury had not been inflicted nor it had affected his mental condition. Main reason of his abnormal behaviour was that he became frightened on account of ulcer operation. His disability was not aggravated to the military service. Thus, the case of Smt. Kanchan Mala Srivastava (supra) runs on its own facts and is distinguishable.

23. The medical expert in the instant case has given the finding "'psychiatric disorder not connected with the service". Nothing has been stated further. There is no categorical finding recorded that it was not aggravated/precipitated due to naval service; only a general observation is made.

Facts speak otherwise and make out that the disease was aggravated/precipitated by the stress of the service afloat, and the burden was on the Respondents to prove that the Petitioner is not entitled to liberal treatment ensured under Rule 9 and the presumptions emanating from Rule 5 has been ignored. Rule 14(C) and (d) which apply for aggravating factors and constitutional diseases if they are adversely affected due to factors related to condition of military service has been ignored.

The authorities have proceeded simply on the basis that disease is constitutional as such is out of purview of service condition. In rejection order Annexure R/2 dated 15th January, 2001, though it is mentioned that disability schizophrenia has been found to be neither attributable to nor aggravated by naval service; disease is constitutional disorder and not connected with the service. Military medical examination report of the Petitioner has been produced and in the entire medical examination report the finding is missing that "schizophrenia has been found to be neither attributable to nor aggravated by naval service". The

contents of para 1(a) of the order are not to be found particularly with respect to aggravation part in the medical examination report on the basis of which the Petitioner was discharged. Only finding is mentioned at para 1(b) of the order that "disease is constitutional disorder and not connected with service". Aggravation part, though mentioned in final order Annexure R/2, but this finding is not based on the medical examination report. Thus, the Petitioner is entitled to benefit of reasonable doubt under Rule 9 and benefit has to be given more liberally to the claimant in field/afloat service cases.

24. Resultantly, the writ petition is allowed. The impugned order is quashed. The Respondents are directed to give disability pension to the Petitioner with effect from 1-10-1999. The arrears be paid within a period of three months from today. Future pension shall be paid regularly as per rules. Cost of the petition on parties.