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**(2009) 07 SHI CK 0027**  
**In the High Court Of Himachal Pradesh**

Union of India (UOI) and Others

APPELLANT

Vs

Smt. Sita Devi

RESPONDENT

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**Date of Decision :** 31-07-2009

**Acts Referred:**

**Citation :** (2009) 3 ShimLC 87

**Hon'ble Judges :** Jagdish Bhalla, C.J.;Rajiv Sharma, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Jagdish Bhalla, C.J. and Rajiv Sharma, J.—This Letters Patent Appeal is directed against the judgment of learned Single Judge rendered in C.W.P. No. 283 of 1996 dated 28.4.2003.

2. Brief facts necessary for the adjudication of this Letters Patent Appeal are that Sh. Sant Ram, original respondent was enrolled in the Army on 7.12.1982. The original respondent was invalidated out from the service in Low Medical Category EEE (Permanent). His disability was assessed 20% for five years by the Invalidating Medical Board. The claim of original respondent for disability pension was rejected by the Chief Controller of Defence Accounts (Pension), Allahabad on 20.7.1992. It was rejected on the ground that the disability was not attributable to or aggravated by the military service. The original respondent was advised to file an appeal. He preferred an appeal which was sent to the Government of India, Ministry of Defence. The same was rejected by the Government of India on 12.12.1994. The original respondent preferred CWP No. 283 of 1996 seeking direction to the Union of India to pay him the disability pension. The same was allowed by the learned Single Judge on 28.4.2003.

3. Mr. Sandeep Sharma has strenuously argued that the judgment rendered by the learned Single Judge is not sustainable. He then argued that the disease "Neurosis Depression Reaction" was constitutional in nature and the same has not been found by the Re-survey Medical Board attributable or aggravated by

military service. Mr. Sandeep Sharma lastly contended that the learned Single Judge has not taken into consideration the relevant law while allowing the petition.

4. Mr. Ashwani Kumar Sharma appearing on behalf of the respondents has supported the judgment.

5. We have gone through the judgment of the learned Single Judge and the records of the civil writ petition carefully.

6. The original respondent was invalided by the Medical Board on 28.10.1991. The proceedings of the Invalidating Medical Board have been placed on record by the Union of India in reply to the civil writ petition. A bare perusal of these proceedings reveals that the original respondent was found to be the case of "neurosis depression reaction". He was discharged before ten years of service. The Medical Board had opined that the disease i.e. neurosis depression reaction was not attributable/ aggravated by military service. His case was turned down by the Chief Controller of Defence Accounts, Allahabad. The appeal has also been rejected, as noticed above.

7. The same was conveyed to the original respondent. He approached this Court seeking direction to the Union of India for release of disability pension. The learned Single Judge has only taken paragraph 7(b) into consideration and has omitted to take note of paragraph 7 (c) of Appendix (II) of the Pension Regulations for the Army, 1961 (part-I). These paragraphs read as under:

7(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.

7(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. These paragraphs were to be read together. The disease developed by the original respondent i.e. "neurosis depression reaction" is constitutional in nature. It can develop at any stage. In the absence of any specific finding, it cannot be assumed/presumed that such like disease is attributable to or aggravated by Army service. The learned Single Judge has erred in law while allowing the writ petition preferred by the original respondent. He has also overlooked Regulation 423.

9. The legal position raised in this Letters Patent Appeal is no more *res Integra* in view of law laid down by their Lordships of the Hon<sup>ble</sup> Supreme Court in *Union of India and Ors. v. Keshar Singh* 2007 (4) SLR 100. Their Lordships of the

Hon"ble Supreme Court were also seized of the matter wherein the Medical Board had given a clear opinion that the illness was not attributable to military service. In this case also the soldier has developed schizophrenia. Their Lordships of the Hon"ble Supreme Court have held as under:

In support of the appeal learned Additional Solicitor General submitted that both learned Single Judge and the Division Bench have lost sight of para 7(c). Both 7(b) and 7(c) have to be read together. They read as follows:

7(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.

7(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.

A bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. An exception, however, is carved out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, clause (c) of Rule 7 makes the position clear 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 to the onset of the disease and that the conditions are due to the circumstances of duty in military service. There is no material placed by the respondent in this regard.

In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment already made to the respondent by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs.

11. The disease developed by the petitioner i.e. "neurosis depression reaction" is constitutional in nature and the Re-survey Medical Board had specifically opined, as noticed above, that the disability was neither attributable nor aggravated by the military service. The opinion of the Re-survey Medical Board has to be given primacy.

12. Accordingly, the learned Single Judge has erred in law by allowing the writ petition only on the basis of plain reading of paragraph 7 (b) of Appendix (II) of the Pension Regulations for the Army, 1961 (part-I), as referred to in Regulations 48, 173 and 185 of the Pension Regulations for the Army, 1961 (part-I). He has omitted to see clause 7 (c) of Appendix (II) of the Pension Regulations for the Army, 1961 (part-I).

13. Consequently, in view of the observations made hereinabove, the Letters Patent Appeal is allowed. The judgment of the learned Single Judge is set aside. No costs.