SUPREME COURT OF INDIA

Secr.,Ministry of Defence

Vs.

Damodaran A.V.(D) Thr.Lrs.

C.A.No…….of 2009

(Dr. Mukundakam Sharma JJ.)

20.08.2009

JUDGMENT

DALVEER BHANDARI, J.

1. Leave granted.

2. This appeal is directed against the judgment of the High Court of Kerala at Ernakulam dated 19.7.2007 delivered in Writ Appeal No. 2038 of 2001.

3. The short question that arises for consideration of this Court is whether the High Court was justified in ignoring the report of the Medical Board in which it is clearly mentioned that disability of A.V. Damodaran was neither attributable nor aggravated by the military service.

4. Brief facts which are necessary to dispose of the appeal are as under:

A.V. Damodaran was enrolled in the Indian Army as Sapper in the Madras Engineers Group on 28.11.1979. After completion of basic training he was posted to 1st Engineer Regiment.

5. A.V. Damodaran was admitted to MI Allahabad and was diagnosed to be suffering from Malaria B.T. on 24.6.1984. He was discharged from the hospital on 30.6.1984 and was again admitted in the Air Force Hospital, Jhansi because he was suffering from Hallucination. A.V. Damodaran was transferred to the Command Hospital, Lucknow for management by a psychiatrist on 5.7.1984. The disability of A.V. Damodaran was diagnosed as Schizophrenia (295) in peace station in July 1984.

6. On 17.1.1985 the Medical Board recommended him to be invalided out of service in medical category EEE with 60% disability for a period of two years due to the disease Schizophrenia (295). The Medical Board had opined that the disability of A.V. Damodaran was not attributable to the military service nor has it been aggravated thereby and it is not connected with the service, as Schizophrenia is a constitutional disease. The opinion of the Medical Board reads as under:

OPINION

This is a case of Schizophrenia in a young officer with 5 yrs service with no disorder of through peruption, behavior and irrational inconguity. He also exhibited impairment of judgment and might onset July 84. He has been treated with neuroleptis, electroplexy and psychotherapy. Response to therapy has been satisfactory. There is no evidence of active present features of illness at present.

However, in view of early onset of the illness, a short period of service and chances of relapse in future under stress and strain of military service, he is considered unfit for further service. Recommended medical category EEE (Psychological).

He has been reviewed by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. In abetment assessed is 60% (sixty percent) disability neither attributable nor aggravated by service. Longevity: Average 11.1.85. AFMSF 16281 along with related documents.

7. The legal representatives of respondent no. 1 herein filed an Original Writ Petition before the High Court praying for grant of disability pension. By an order dated 20.12.2000 the learned Single Judge has allowed the original petition and declared that the individual was eligible to get disability pension under the provisions contained in the Pension Regulations for the Army, 1961 and such other enabling provisions. The Department filed a Writ Appeal before the High Court. By an impugned order, the High Court has dismissed the said appeal finding no reason to interfere with the discretion exercised by the learned Single Judge.

8. The main questions of law that arise for consideration of this Court are as under:

i) Whether the High Court is justified in upholding the order passed by the learned Single Judge granting disability pension to the respondents and dismissing the Writ Appeal by the appellant?

ii) Whether the respondents are entitled to the grant of disability pension under the provisions as contained in Regulation 173 of the Pension Regulations for the Army, 1961 and such other enabling provisions?

9. The appellant Union of India submitted that:

a) As per the medical opinion the respondent A.V. Damodaran was examined by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. In disablement assessed is 60% (sixty percent) disability neither attributable nor aggravated by service.

b) The respondent's personal history reveals that he joined army in 1979 to secure a good job. He is unmarried and supporting his family. He is having no addiction to any intoxication. Field Service is

Nil and Punishment is Nil.

c) It is submitted that Discharge Certificate was prepared and issued to the respondent by the Commanding Officer of his parent Unit upon his release from the service. Therefore, original discharge certificate is not available with the Department. The copy of discharge certificate presently available with the Department is one which was forwarded by the respondent along with his representation dated 18.3.1986 submitted by him to the Department. Hence, the authenticity of the discharge certificate cannot be relied upon and taken into account for grant of disability pension. In any event, in view of the Medical Board held on 17.1.1985, it is erroneous.

d) In the present case, the Medical Board held on 17.1.1985 at Command Hospital (Central Command), Lucknow, consisting of specialized Doctors had opined that the disability of the respondent is neither attributable nor aggravated by the Military service and it is not connected with the service, but it was constitutional in nature. The said opinion is binding on all the concerns and is the only document on the basis of which disability pension can be granted or refused.

10. The appellant, aggrieved by the judgment of the Division Bench of the High Court, preferred this appeal.

11. The appellant relied upon the judgment of this Court in Controller of Defence Accounts (Pension) Others v. S. Balachandran Nair (2005) 13 SCC 128. In that case, a reference made under Rule 173 of the Pension Regulations for the Army has also been discussed. Rule 173 of the Pension Regulations for the Army reads as under:

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 above.

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

Relevant portion in Appendix II reads as follows: `2. Disablement or death shall be accepted as due to military service provided it is certified that-- (a) The disablement is due to 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;

(b) the death was due to or hastened by--

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note.--The rule also covers cases of death after discharge/invaliding from service.

3. There must be a causal connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case.'

12. Regulation 423 which deals with Attributability to service has also been discussed in S. Balachandran Nair's case (supra), which reads as under:

423. Attributability to service.--(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence `of course it is possible but not in the least probable' the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in field service/active service areas. (b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of `duty' in armed forces. In case of injuries which were self- inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self- infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 service in the armed forces. 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.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/medical officer will specify reasons for their/his opinion. The opinion of the Medical Board/medical officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will,

however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO Unit will furnish a report on: (i) AFMS F-81 in all cases other than those due to injuries.

(i) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).

13. The question regarding payment of disability pension has also been dealt with by this Court in Union of India v. Baljit Singh (1996) 11 SCC 315. In para 6 at page 316, this Court observed as under:

6. ... It is seen that various criteria 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 para 7 which contemplates that in respect of a disease the Rules enumerated thereunder required 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 to 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.

14. This question again came up before this Court in Union of India Others v. Dhir Singh China, Colonel (Retd.) (2003) 2 SCC 382 and the Court in para 7 of the said judgment observed as under:

7. 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 not in 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.

15. This Court in this case has clearly observed that the High Court was not justified in ignoring the conclusions of the Medical Board and directing payment of pension.

16. This Court in Union of India Others v. Keshar Singh (2007) 12 SCC 675 dealt with a case where the respondent a rifleman was discharged from Army on ground of his non- suitability for continuance in Army as he was suffering from Schizophrenia. Respondent's application for grant of disability pension was rejected on the ground that the disability was not connected with the service. Single Judge as well as a Division Bench had held that it was not mentioned at the time of entering to army service that the respondent suffered from Schizophrenia and therefore it was attributable to army service. This Court has held 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. This court relied on Medical Board's opinion to the effect that the illness suffered by the respondent was not attributable to military service. This court while setting aside the judgments of the learned Single Judge and the Division Bench held that the respondent was not entitled to disability pension.

17. I have heard the learned counsel for the parties. I am of the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the instant case, the Medical Board has clearly opined that the disability of Late Shri A.V. Damodaran was neither attributable nor aggravated by the military service.

18. In my considered view, both the learned Single Judge and the Division Bench of the High Court have not considered this case in proper prospective and in the light of the judgments of this Court. The legal representatives of A.V. Damodaran are not entitled to the disability pension. However, in the facts and circumstances of the case, in case some amount has been paid to the legal representatives of A.V. Damodaran towards disability pension, the same may not be recovered from them.

19. The appeal is accordingly allowed leaving the parties to bear their own costs.

(Dalveer Bhandari) August 20, 2009.

SUPREME COURT OF INDIA

C.A.No…….. of 2009

Secretary, Ministry of Defence

Vs.

Damodaran A.V. (Dead) through LRs

JUDGMENT

DR. MUKUNDAKAM SHARMA, J.

1. I have had the privilege and opportunity of going through the well considered and reasoned judgment of my learned brother Justice Dalveer Bhandari. While most respectfully agreeing with the conclusions arrived at, I would like to add a few paragraphs recording my own reasons on the issues that arise for consideration in this case.

2. The facts leading to the filing of the Special Leave Petition by the Ministry of Defence are already set out in the detailed judgment of my learned brother and therefore I do not intend to reiterate the same and burden this judgment. In the light of the facts stated therein, the issue that arises for our consideration is as to whether in view of the opinion of the Medical Board that the disability of A.V. Damodaran was not attributable to the military service nor aggravated thereby and that it is not connected with the service as Schizophrenia is a constitutional disease could still be said and held to be attributable or aggravated by military service.

3. Schizophrenia is a term used to describe a mental disorder characterized by abnormalities in the perception or expression of reality, which is most commonly manifested as auditory hallucinations, bizarre delusions, or disorganized speech and thinking with significant social or occupational dysfunction. The medical studies have opined that there is no known single cause responsible for Schizophrenia. However, they have pointed towards likelihood of genetic, behavioural and environmental factors playing a role in the development of this mental health condition.

4. At this stage reference may be made to the provisions of para 173 of the Pension Regulations, which provides as follows:-

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty 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 II.

5. The question of attributability or aggravation is determined under Appendix-II of Pension Regulations. In 1982, a set of rules called Entitlement Rules for Casualty Pensionary Awards 1982 were brought into force and after promulgation of the said rules the question of attributability would have to be decided and determined in accordance with the provisions of the said Rules. A guideline is also framed which lays down the mode and manner as also the guiding principles for determining such cases have been set out therein. The aforesaid Entitlement Rules have been made effective w.e.f. January 1, 1982 and the aforesaid set of rules is required to be read in conjunction with the Guide to Medical Officers (Military Pensions) 1980. It is provided in the aforesaid Entitlement Rules read with the guidelines that invalidation from service is a necessary pre-condition for grant of disability pension. In paragraph 5 thereof a presumption is to be drawn for determining the question of entitlement to such disability pension when it provides as follows:-

5. The approach to the question of entitlement to casualty pensionary awards and evaluation of

disabilities shall be 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.

6. Paragraph 6, on the other hand, provides that 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 is attributable to military service, or existed before or arose during military service and has been and remains aggravated thereby, or (b) the death of the personnel was due to or hastened by a wound, injury or disease which was attributable to military service, or the aggravation by military service of a wound, injury or disease which existed before or arose during military service. Paragraph 8 provides that attributability/aggravation would be considered if causal connection between death/disablement and military service is certified by an appropriate medical authority. Paragraph 11 deals with cases where an individual in receipt of disability pension dies at home.

7. The aforesaid provisions including that of the guidelines called the Guide to Medical Officers (Military Pensions) 1980 and also the source of power, i.e., the provision of Section 173 of the Pension Regulations including other relevant provisions came to be considered by the Supreme Court. A conjoint reading of the aforesaid provisions along with the decisions rendered by this Court makes it amply clear that the said provisions and the decisions lay down the entire procedure, guidelines and principles as to under what circumstances a person could be said to be medically unfit and disabled and is to be boarded out from service and its attributability. The decisions have also dealt with the manner and circumstances under which the said person would be entitled to receive the disability pension.

8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than `AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF- 16. The Invalidating Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties

relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service.

10. In the case of Controller of Defence Accounts (Pension) and others v. S. Balachandran Nair reported in AIR 2005 SC 4391 and the decision in Union of India and another v. Baljit Singh reported in 1996 (11) SCC 315 held that Medical Board's opinion to the effect that illness and disability suffered by the respondent therein was not attributable to military service cannot be substituted by the court in order to arrive at a contrary finding. It was also held that where a medical board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court's direction to the Government to pay disability pension was not correct. The Supreme Court in the case of Baljit Singh (supra) also dealt with the contention that the employee was posted at a sensitive border area and, therefore, his illness was fully attributable to military service and negatived the same.

11. In the backdrop of the aforesaid legal position made clear by several decisions of this Court the facts of the present case are required to be considered.

12. It is revealed from the personal and family history of the respondent that on account of financial problems, the respondent was forced to abandon his education and join the Army. The respondent was the sole bread earner of his family and was burdened with the responsibility of maintaining his aged parents and three younger sisters. Further, it may be pertinent to note here that the respondent was posted to 1st Engineer Regiment at Allahabad, which is neither a sensitive border area nor a difficult terrain/high altitude region. The respondent was not posted at an isolated location. He had access to the society there. A person is, under law, entitled to the disability pension provided his disability is certified by the appropriate medical authority as being attributable to or aggravated by or connected with the military service.

13. In the present appeal, the record reveals that in the opinion of the Medical Board no physical contributory factor was elicited for the psychotic breakdown of the respondent. Thus, the condition of military service cannot be said to have triggered the onset of schizophrenia in the respondent. However, the possibility of the development of schizophrenia in the respondent as a result of family stress and pressure (which is regarded as a factor triggering the onset of this mental condition in some individuals cannot be ruled out totally. The respondent did not assail the validity of the finding or the opinion of the Medical Board. On the contrary, the respondent has placed reliance on the findings of the Board on the aspect of the extent of the respondent's disability being 60%.

14. In view of the abovestated opinion of the Medical Board, it is difficult to hold that the case of the respondent for disability pension is made out.

15. Here is also a case where the Medical Board has given its definite opinion that disease from which the petitioner was suffering was not attributable or aggravated by military service. It was recorded by the Medical Board that the case is of Schizophrenia in a young officer with five years service manifested in disorder of thought, perception, behaviour and emotional incongruity. Further

opinion of the Board is that he had been reviewed by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. In disablement assessed is 60% (sixty percent) disability neither attributable nor aggravated by service.

16. Clearly therefore, the opinion of the Medical Board ruled out the possibility of the disease of the respondent being attributable to or aggravated by military service. That being the position, the respondent cannot claim for payment of any disability pension. Another relevant factor which is required to be noted that the report of the medical board is not under challenge. As has been held by this Court, such opinion of the medical board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent.

17. I fully endorse and agree with the conclusion arrived at by my esteemed brother Justice Dalveer Bhandari that the legal representatives of the respondent A.V. Damodaran are not entitled to disability pension but if any amount towards such disability pension has already been paid, the same may not be recovered from the legal representatives. I also hold that the appeal stands allowed in terms of the aforesaid order.