

SUPREME COURT OF INDIA

No. 14666828m Ex CFN Narsingh Yadav

Vs.

Union of India

C.A.No.7672 of 2019

(L.Nageshwara Rao and Hemant Gupta,JJ.,)

03.10.2019

JUDGMENT

Hemant Gupta,J.,

1. The challenge in the present appeal is to an order passed by the Armed Forces Tribunal, Lucknow on September 23, 2011 whereby, the claim of the appellant for grant of disability pension was not accepted.

2. The appellant was enrolled in the Indian Army on December 2, 2003. The invaliding Medical Board found the appellant to be suffering from Schizophrenia, which disability was assessed at 20% for a period of five years. The opinion of the Board was that disability was neither attributable to nor aggravated by military service and consequently, the appellant was discharged from army service on May 8, 2007. The claim of the appellant for disability pension was rejected departmentally and later by the Tribunal and still aggrieved, the appellant is before this Court.

3. The appellant was appointed as CFN - Craftsman (Military Rank). In Annexure RP1 which includes the signed Personal Statement of the appellant, he was posted at 3 EME Centre, Bhopal from December 2, 2003 to August 23, 2005 and thereafter at AD Static Workshop from August 24, 2005 till the time, he was produced before the invaliding Medical Board. Both the places of posting of the appellant were the peace stations. In respect of disease, the appellant declared that he was treated, firstly, at INHS, Nivarini Chilka on September 7 and 8, 2006, then, at Command Hospital, Kolkata from September 9, 2006 to December 23, 2006. Thereafter, he was treated at Military Hospital, Allahabad from January 21, 2007 to February 21, 2007 and finally, at Command Hospital, Kolkata from February 23, 2007 till the time, he was examined by the invaliding Medical Board. In Part I of the Personal Statement, the Question asked was to "Give details of any incidents during your service which you think caused or made your disability worse". The answer given by the appellant was 'NIL'. In Part II of the Report, the Commanding Officer answered 'No' to the question - "Did the Duties involve Severe/exceptional stress and strain?"

4. The summary and opinion of the Specialist in Psychiatry of Command Hospital (Eastern Command), Kolkata dated April 10, 2007 read as under:

"Summary 23 Feb 07 onwards till date Period of Hospitalization: Sec Hospital, Gopalpur INHS Kaiyani, Vizag CH (EC), Kolkata Sick Leave MH Allahabad CH (EC), Kolkata 07 Sep 06 to 07 Sep 06 07 Sep 06 to 15 Sep 06 16 Sep 06 to 23 Dec 06 24 Dec 06 to 21 Jan 07 21 Jan 07 to 22 Feb 07

AFMSF-10 dated 07 Sep 06 mentions "punctual, disciplines, dedicated, social drinker, above average competence, cheerful, active and outgoing, retention recommended, developed fever and headache on 06 Sep 06 following which he was noted to be behaving abnormally.

History of Present Illness:

Individual was brought to psychiatric attention in mid Sep at the behest of unit authorities as he was talking irrelevantly, laughing and crying for no apparent reason, in the background of febrile episode. Apparently functioning well until Sep 06 when he was noted to be aloof, lacked interest in his work, not taking self care nor reporting for duty in time. Found to be wandering aimlessly in the unit. Felt that others were planning to harm him; could hear them talking about him. Further when onboard the train to Vizag felt he was being followed and things happening around him was in reference to him. When offered fruits by co-passenger felt it had a special meaning often noted to be taking irrelevantly, crying for his mother who had died about 12 years back. Felt that others came to know what he was thinking. Become violent when others tried to stop him or gave instructions to follow."

"Opinion 21 years old EME/Veh Mech with nearly 3[^] years service, no past or family h/o psychiatric illness. Had a psychotic breakdown of schizophrenic nature in Sep 06 Managed as a case of Schizophrenia F 20 and treated with antipsychotics, ECT and other supportive measures. Poor response to treatment. Presently asymptomatic, residual negative features persist. In view of the above, onset of his psychotic breakdown at the start of the career, and persistence of residual negative features, he is unlikely to be a fit soldier for further service. Hence recommend to be invalided from service in category S5 of SHAPE classification as a case of Schizophrenia F20."

5. The Medical Board concluded that the disability is neither attributed to army service nor aggravated by military service though it assessed the disability at 20% for five years. Such opinion of the Medical Board dated April 20, 2007 is the basis of the discharge of the appellatant. The opinion of the Medical Board is as under:

"CERTIFICATE

1. Certified that the IMB held in respect of No.14666828m CFN NS Yadav of AD State Wk SpC/o 99 APO to a case of SCHIZOPHRENIA F. 20.0.

2. Individual is found fit for civil job.

Date: 20 Apr. 2007 Lt.Col.

(Rajiv Kamra)"

6. The appellant relies upon an order passed by this Court in Ex. *Gnr. Laxmanram Poonia (Dead) through Legal Representatives v. Union of India & Ors*¹. as also the judgments in *Dharamvir Singh v. Union of India & Ors*². and *Union of India & Anr. v. Rajbir Singh*³ to contend that since no note was given at the time of enrolment of the said disease in the Army, therefore, such disability is to be attributed to military service.

7. In *Laxmanram Poonia*, there was a positive finding that appellant was overburdened with work due to scarcity of staff and he suffered hypertension resulting in lack of sleep and hunger due to continuous restless duty hours for several days. This Court allowed the appeal of the appellant and granted disability pension.

8. In *Dharamvir Singh*, the appellant was sepoy in the Corps of Signals of the Indian Army and was boarded out of service after nine years of service when he was suffering from schizophrenia. This Court relied upon Guide to Medical Officers (Military Pension), 1980 and the Entitlement Rules for Casualty Pensionary Awards, 1982 to hold that since no note was given at the time of enrolment of the person, therefore, such disease is presumed to be attributed to or aggravated by military service. The Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles" has mentioned following diseases in para 27 of the judgment, which ordinarily escape detection at the time of enrolment:

"(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis,

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc."

(Emphasis Supplied)

9. This Court also extracted the relevant provisions from the 1982 Rules in the order, which read as under:-

"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.

9. Onus of proof—The claimant shall not be called upon to prove the conditions of entitlements. 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.

14. Diseases.—In respect of diseases, the following rules will be observed—

(a) 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 courses of the disease will fall for acceptance on the basis of aggravation.

(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.

(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."

10. The Rule 14, as reproduced above, was amended vide Government of India, Ministry of Defence letter No. 1(1)/81/D(Pen-C) dated 20th June, 1996. The amended Clauses read as follows:

"Rule 14 (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 military service did not contribute to the onset or adversely affect the course 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 services."

11. In *Rajbir Singh*, this Court held that the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service. The Court held as under:

"9. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service, subject to the condition that 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 same will not be deemed to have so arisen"

14. The legal position as stated in *Dharamvir Singh case [Dharamvir Singh v. Union of India, (2013) 7 SCC 316 : (2013) 2 SCC (L&S) 706]* is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the

time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.

16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants."

12. A three Judge Bench of this Court in *Veer Pal Singh v. Secretary, Ministry of Defence*⁴ rejected the opinion of invaliding Medical Board but directed the respondents to refer the case to Review Medical Board to reassess the medical condition of the appellant and to find out whether at the time of discharge from service, he was suffering from disease which made him unfit to continue in service. In the said case, the appellant was appointed in the year 1972 and was discharged in view of the opinion of the invaliding Medical Board dated November 14, 1977. The appellant has prayed for constitution of a fresh Medical Board to assess his disease and disability in a writ petition filed before the Allahabad High Court. This Court held as under:

"10. Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.

16. F.C. Redlich and Daniel X. Freedman in their book titled *The Theory and Practice of Psychiatry* (1966 Edn.) observed:

"Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living.... (p. 252) Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity.." (p. 465)

(emphasis supplied)

18. In *Controller of Defence Accounts (Pension) v. S. Balachandran Nair*⁵ on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in *Ministry of Defence v. A.V. Damodaran*⁶. However, in neither of those cases, this Court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.

19. As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14-7-2011 and 16-9-2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension."

13. In the aforesaid case, the Court referred the matter to the Review Medical Board in view of the fact that Psychiatrist has noted that the appellant has improved with treatment. The Court referred to Merriam Webster Dictionary-, Report of National Institute of Mental Health, USA; Modi's Medical Jurisprudence and Toxicology; and the book titled 'The Theory and Practice of Psychiatry' authored by F.C. Redlich and Daniel X. Freedman, to hold that the observations made by Psychiatrist was substantially incompatible with the existing literature on the subject.

14. However, in the present case, we find that there is no such infirmity in the report of the Medical Board which may warrant reconsideration of the physical condition and the extent of disability by the Review Medical Board.

15. We find that it is not mechanical application of the principle that any disorder not

mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

16. Annexure I to Chapter IV of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement: General Principles" points out that certain diseases which may be undetectable by physical examination on enrolment including the Mental Disorders; Epilepsy and Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.

17. The 1982 Rules classify the diseases which are affected by climatic conditions, stress and strain and dietary complications. The stress and strain cause the following injuries as per the said classification of diseases:

- "(a) Psychosis and psychoneurosis.
- (b) Bronchial Asthma.
- (c) Myocardial infarction, and other forms of IHD.
- (d) Peptic ulcer."

18. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.

19. The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3% years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

20. In the present case, clause 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.

22. Thus, we do not find any merit in the present appeal, accordingly, the same is dismissed.

Judgment Referred.

¹(2017) 4 SCC 0697

²(2013) 7 SCC 0316

³(2015) 12 SCC 0264

⁴(2013) 8 SCC 0083

⁵(2005) 13 SCC 0128

⁶(2009) 9 SCC 0140