

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Reserve : 14.02.2008
Date of Decision : 14.03.2008

+ **WP(C) No.5319/2004**

Smt. Lajwanti Devi
w/o Sh. Vijay Pal Singh Petitioner

Versus

1. Union of India
Through The Secretary
2. The Director General
Boarder Security Force
3. The Commandant Respondents

Advocates who appeared in this case :

For the petitioner : Mr. A.K. Trivedi, Advocate

For the respondents : Ms. Monika Garg, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

J.M. MALIK, J.

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1. Vijay Pal Singh, husband of the petitioner got enrolled in the Border Security Force (In short BSF) on 27th March, 1990 as Constable. He was not suffering from any disease at the time of his entry into service. After completion of his training for about 9 months in Jodhpur (Rajasthan), he was transferred along with his Unit to Sri Nagar and was deployed in Rajouri Sector. He became sick while serving at Rajouri Sector on board at high attitude area due to disease i.e. 'Grandmal Epilepsy'. While performing duties he fell down and suffered a fracture of "lateral Gondyle humerus of left hand. These diseases were attributable to the BSF service and he was brought before the Medical Board on 31st July, 1992 at Rajouri and placed in low medical category 'EEE' permanent and was recommended for retention in service. However, he received a notice dated 31.8.1992, which was issued to him stating that he would be boarded out from service. Thereafter, he was invalidated out from service vide order dated 15.9.1992. He made a representation for grant of his disability pension and other benefits on 4.11.1992. He remained under treatment during the period between 1992 to 1996. Thereafter,

he lost the control of brain and left his home on 26th June 1996 at 8.00 pm. The father of the husband of the petitioner lodged a complaint with Bhiwani Police Station regarding the missing of his son. However, he could not be traced. Since more than 7 years have lapsed, therefore, it is to be assumed that the husband of the petitioner has since died in view of Section 108 of Evidence Act.

2. The petitioner made a representation to the Army department for grant of appointment on compassionate ground for herself but the same was rejected by the respondents vide order dated 12.6.1996. It is submitted that husband of the petitioner was invalided out of service with 100% disability and therefore he was entitled for grant of disability pension. A legal notice requiring the respondents to pay pension to her was sent to the respondents on 1.7.2002 which is yet to be replied by the respondents. On these grounds the present writ petition with the prayers for grant of the extra-ordinary family pension to the petitioner w.e.f. 27th June, 1996 from the date of missing of the husband of the petitioner along with the arrears of back period pension with interest and the grant of a Life Time Arrears (in

short LTA) of the disability pension of the husband of the petitioner from the date of invalidation from service till 26.6.1996 with interest was filed in this court on 21.03.2004.

3. The respondents have contested the present writ petition.

4. We have heard the counsel for the parties. The learned counsel for the petitioner vehemently argued that the above said disease was contracted during the service and it is clearly attributable to the service in BSF. It was pointed out that the husband of the petitioner was invalidated out from service on medical ground due to the disease of Epilepsy in medical category 'EEE' and as per the Medical Board proceedings in Annexure R-4 the disease of the husband of the petitioner was aggravated by service due to stress and strain of military service and the percentage of disability was assessed at 40%. It was submitted that the husband of the petitioner was entitled for disability pension under "The Central Civil Services (Extraordinary Pension) Rules" as the disease due to which he had been invalidated out of service was aggravated by service conditions. The relevant portion of Annexure R4 is produced as follows :

“OPINION OF THE BOARD”

Findings of the Board :- The board having examined No.90644679 Ct. Vijay Pal Singh of 102BN BSF are of the opinion that he is suffering from 1. GRAND MALEPILEPSY 2. FRACTURE LATERAL CONDYLE HUMERUS (Lt) 3. MYOSITIS OSSIFICANS – ELBOW (Lt) 4. TARDY ULNAR NERVE PALSY (Lt) OPID and is considered unfit for further service in BSF.

1.	Was the disability contracted in service? Yes	3.	Was in contracted in circumstances over which he has no control? No
4.	Is it directly attributable to conditions of service? No	5.	If so, by what specified conditions. Nil
6.	If not directly attributable to service, was it aggravated thereby and if so, by what specify conditions. Yes, due to stress and strain of service conditions.	7.	Medical category recommended EEE
8.	Percentage of disability 40%		

The learned counsel for the petitioner argued with vehemence that the abovesaid case is fully covered with Appendix-3” Central Civil Services (Extraordinary Pension) Rules, rule 3-A (1) (a) II.

5. We are unable to cotton with his arguments. As a matter of fact every “fact” militates against his argument. First of all the abovesaid Rule 3A-I-A-(II) deserves a look as it appears in Swamy’s Pension Compilation incorporating CCS Pension Rules (incorporating corrections received upto February 2002) Sixteenth edition 2002 at pages 325 and 326. Again it must be borne in mind that the provisions of the rule is not to be read in bits and pieces to the detriment of one and to the benefit of other. This provision is reproduced as follows:-

3-A (1)

- (a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which-
 - (i) Is attributable to Government Service, or
 - (ii) Existed before or arose during Government service and has been and remains aggravated thereby.
- (b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by -
 - (i) a wound, injury or disease which was attributable to Government service, or
 - (ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a casual connection between –

- (a) disablement and Government Service; and

- (b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these Rules.”

Again there is a clarification appended thereto which reads-

“Clarification – It will be seen from the new (revised) Forms ‘C’ , ‘D’ and ‘E’ that these forms of medical certificates have been so designed that they would indicate whether the entitlement criteria laid down in new Rule 3-A have been satisfied or not, and therefore, normally, no other separate certificates in that behalf may be necessary. It is essential for the Administrative Officer as well as the Audit Office (PAO) concerned to satisfy themselves that the death/disability is, in fact, attributable to or aggravated by the Government service which alone makes an EOP Award admissible and for that purpose, it is essential for both of these authorities to satisfy themselves in that behalf and certify the nexus and casual connection between disablement and Government service or between death and Government service (as the case may be), in any particular case, as laid down in the new Rule 3-A on the basis of the medical and other documents regarding the case. If a Government servant had died in such circumstances and that a medical report could not be secured, even then, the nexus and the casual connection between death and Government service has to be established before conceding acceptance of death due to Government service.”

It appears that all these provisions appearing in various Acts are para materia to each other. The above quoted rule, even if it is assumed to be applicable to the BSF, does not extend any help to the petitioner.

6. The perusal of the record clearly goes to show that the petitioner was suffering from the above said disease prior to his joining the service in BSF. Medical Board proceedings Annexure R-1 is a document of utmost importance. It clears the position to a large extent. The history of the above said illness was recorded therein. The relevant portion coming out from horse's mouth is reproduced below :

"Since the age of 14 he was apparently well. At his age of 15 he suddenly developed convulsions. The convulsion was generalized, history of tongue bite, dribbling of saliva present he has had convulsions off and on from that time. As per his statement he was taking Ayurvedic treatment upto the age of 20 years. The details of treatment and medicines he was taking not known, and no medical documents is available with him. Later during he joined BSF and underwent basic training at STC Jodhpur. During training also he was taking Ayurvedic medicines and here is no history convulsions during the period. After completion of his training he joined 102 Bn BSF at Srinagar on Feb' 90. After that since April '91 he did not have any convulsions and he was performing all duties. During the month of May '91 he again developed convulsions. Later he was referred to BSF Hospital New Delhi.

From there he was referred to Safdarjung Hospital New Delhi. Necessary investigations were done and diagnosed as a case of Grandmal Epilepsy. There he was prescribed T. Gardenal 60mg daily and T. Mazetal 100 mg tds. Since then was taking the medicines regularly and there was the complaint. Later since April '92 he stopped the medicines on his own and as per his statement there is no complaint.

2. He sustained injury to left elbow on 6.2.92 when he fell down, while he was on annual leave he took treatment from a local practitioner and was advised exercises of elbow. He then developed pain in left elbow and difficulty in bending the elbow. Later he noticed the wasting of muscles of left hand associated with numbness along the ulnar aspect of left forearm and hand, which is progressively increasing. On 19.5.92 he was referred to 150 GH. Necessary X-rays were taken and there he was diagnosed as a "Old case of Fracture medial Epicondyle with Tardy ulnar nerve palsy-LT" From there he was referred to northern command Hospital Udhampur. There he underwent Anterior Transposition of the Ulnar nerve on 8.6.92. After surgery restriction of elbow joint movements and neurological deficit is the same."

7. Under these circumstances, it cannot be said that the above said disease is attributable to his service in the BSF. The learned counsel for the petitioner did not pick up a dispute with the fact that the husband of the petitioner developed convulsions at the age of 15 years. He did not challenge the Medical Board proceedings Annexure R1 or Annexure R4. We find considerable force in the argument urged by the learned counsel for the

respondents to the effect that the husband of the petitioner appears to have suppressed this fact at the time of his enrollment in BSF. A known case of epilepsy cannot be attributable to or aggravated by military service within short span of six or twelve months. At the time of enrollment the respondents are not supposed to conduct Computed Tomography (CT Scan) or Electroencephalogram (EEG) during the routine check up.

8. In a recent authority reported in Union of India and Ors. Vs. Keshar Singh, 2007 (6) SCALE 17, the following authorities were referred :

“7. In Union of India and Anr. v. Baljit Singh (1996) 11 SCC 315 this Court had taken note of Rule 173 of the Pension Regulations. It was observed that where the 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. It was inter alia observed as follows :

“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 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 ample clear from clause (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 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 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”.

8. The position was again reiterated in *Union of India and Ors. V. Dhir Singh China, Colonel (Retd.)* (2003) 2 SCC 382. In para 7 it was observed as follows :

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.

9. The above position was highlighted in Controller of Defence Accounts (Pension) and Ors. v. S. Balachandran Nair (2005) 13SCC 128.”

9. Similar view was taken in another case in Union of India & anr. Vs. Bashirbhai R. Khiliji, 2007 (8) Scale 63.

10. In the above said authorities the Apex Court authoritatively laid down that prudence has to be given to the findings recorded by the Medical Board which remains unrebutted on the record till

date. For all these reasons, we find no force in these arguments and the writ petition is hereby dismissed.

J.M. MALIK, J.

A.K. SIKRI, J.

March 14, 2008
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