

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

% Date of Reserve : 9.1.2008
Date of Decision : 1.2.2008

+ **WP(C) No.7290/2004**

Ex.Rect./GD Krishan Kumar,
S/o Sh. Shyam Singh,
R/o Village, Dadanpur,
Distt. Jhajjar (Haryana)

.... Petitioner

Versus

1. Union of India
Thru The Secretary,
Ministry of Home Affairs,
North Block,
Govt. of India, New Delhi
2. The Director General,
CRPF, CGO Complex,
Lodhi Road, New Delhi
3. The Addl. Deputy Inspector Genl. of Police
CRPF Group Centre, Guragaon,
Haryana ... Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Rohit Sharma, Advocate

For the respondents : Mr.S.B.Sharma with Mr.Manoj Ohri,
Advocates

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. Krishan Kumar, petitioner, was enrolled in CRPF on 18th March, 2002. No disease came to light during his medical examination, at the time of his appointment. He was allotted his service number as 025110243. The petitioner had an attack of epileptic seizure during training at Kadarapur, Gurgaon on 22nd April, 2002. Firstly, he was referred to the Base Hospital, CRPF, New Delhi by the Chief Medical Officer (Incharge) GC, Gurgaon vide letter dated 24th June, 2002. He was also referred to the Neuro Physician, Safdarjung Hospital for investigation and was diagnosed as a case of epileptic treatment. He remained under treatment till 17th August 2002. The Additional DIGP, CRPF, Gurgaon vide office order dated 18th January, 2003 terminated the service of the petitioner under Rule 5 of the CCS (Temporary Service) Rules, 1965, without assigning any reason and show cause notice. The petitioner was orally informed that his services

were terminated due to his sickness. The petitioner made a detailed representation but it did not produce the desired result. Under these circumstances, the instant writ petition was filed with the prayer that the order dated 18th January, 2003 be quashed or in the alternative the petitioner be granted disability pension as per CCS (EDP) Rule with all the consequential benefits.

2. According to the respondents after the attack of epileptic seizure, he was advised three months treatment initially and was kept under observation. During the said period also the petitioner had two epileptic attacks. After three months he was again referred to the Physician, Base Hospital-I, CRPF for review of the patient. The petitioner was examined and viewed by the Physician, Base Hospital-I, CRPF, who gave the following opinion:-

“A known case of epilepsy with H/o several episodes of seizure treated at Base Hospital-I One CRPF as well as at Safdarjung Hospital, New Delhi.

Since he is a recruit and has been detected to have a seizure disorder he will not be fit for CRPF, where he has to work for 33 years.

Action may be taken as per existing orders i.e. recruitment rules S/o 10 of 2000 and SO 7/99. He should be discharged from force as unbecoming effective soldier (combant) in force. Action to be taken accordingly by the unit.”

Thereafter, the case of the petitioner was referred to the

Board of Medical Officers, which gave the following opinion:-

“Having gone through the medical documents of the patient and the remark given by the medical specialist of Base Hospital-I CRPF, Jharoda Kalan New Delhi and after careful examination of the patient and all other related documents the board opines that the No. 025110243 Rt/CD Krishan Kumar is case of epilepsy and unfit for the force/CRPF duties and therefore be invalided out of service.”

3. We have heard the learned counsel for the parties. It may be mentioned, at the very outset, that the learned counsel for the petitioner did not press the prayer seeking quashing of termination order dated 18th January, 2003 and confined his arguments to the issue of grant of pension only. The learned counsel for the petitioner vehemently argued that the petitioner is entitled to grant of special pension. In support of his case, he has drawn the attention of this Court towards the Appendix III, Schedule 1-A under Rule 3(4) of the CCS (Extraordinary Pension) Rules. This schedule mentions about the list and classification of diseases which can be attributed by service. Its Clause 1(d) mentions about the diseases affected by training, marching, etc. The attention of the Court was drawn towards its Clause (v), which is reproduced as under:-

1. LIST AND CLASSIFICATION OF DISEASES WHICH CAN BE CONTRACTED BY SERVICE

A to D. xxx xxx xxx

D. Diseases affected by training, marching, etc.

(i) to (iv) xxx xxx xxx

**(v) Post-traumatic epilepsy and other
mental changes resulting from skull injury.**

(vi) to (viii) xxx xxx xxx

4. The counsel for the petitioner has also drawn our attention towards the manifold meanings of epilepsy as defined in Macdold Critchley, IInd Edition, 1986.

5. Counsel for the petitioner further argued that the abovesaid disease cropped up during the service and therefore, the same is attributable to the service. He also submitted that at the time of his routine medical test, this disease could not be traced out, meaning thereby that at the time of joining the service he was not suffering from the above-said disease.

6. After mulling over the evidence on record, we find that instead of touching the heart of the problem, the learned counsel for the petitioner just skirted it. The abovesaid provision of law

has no application to the facts of the case. The abovesaid disease did not result from skull injury. The above referred book by Macdold Critchley hardly extends any assistance to this controversy. The detection of epileptic syndrome is not possible during the routine medical test. There is not even an iota of evidence which may go to show that Computed Tomography (CT Scan) or Electroencephalogram (EEG) were conducted at the time of routine medical test. The above-said quoted medical report clearly goes to show that the petitioner had a known case of epilepsy. The term, "known case of epilepsy" is very significant. This clearly means that he was an old patient of epileptic disease. The said report given by the Base Hospital-I, CRPF remains unrebutted on record. There is no evidence that the said disease had arisen in service or the conditions of disease were due to the circumstances of the duty in service. Again it cannot be said that the sustenance of disease per se is on account of military service.

7. 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 Chana, 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.

8. It must be borne in mind that there lies no rub in granting pension in favour of a trainee. Again “a known case of epilepsy” cannot be attributable to or aggravated by military service within short span of a month or two of joining service. In the above said authorities the Apex Court had authoritatively laid down that precedence has to be given to the findings recorded by the Medical Board. In the instant case the findings of the Medical Board are in conformity with the rules and regulations and guidelines meant for medical officers as no objection was ever raised by the petitioner. The original file goes to reveal that petitioner was examined by as many as three doctors. The petitioner did not pick up a conflict with the above said Medical Report. We cannot sit as a court of appeal or substitute our own views over the decision of the Medical Board. The findings and opinion recorded by the Medical Board would be binding. It appears that the appellant was suffering from the said disease and he did not develop it suddenly out of blue.

9. For the reasons mentioned above, we find no reason to interfere in the present writ petition. The same is therefore dismissed but there shall be no order as to cost.

J.M. MALIK, J.

A.K. SIKRI, J.

February 01, 2008
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