

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203

**CWP No.10659 of 2013
Date of Decision: 12.01.2015.**

Mohinder Singh

.....Petitioner

Versus

Union of India & others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. B.S. Sehgal, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate
for respondents.

- 1. *Whether Reporters of local papers may be allowed to see the judgment ?***
- 2. *To be referred to the Reporters or not ?***
- 3. *Whether the judgment should be reported in the Digest?***

SURYA KANT, J. (ORAL)

The question that arises for consideration in this case is whether 'Diabetes' on the basis of which the petitioner was put into 'low medical category' and was boarded out from the military service, is attributable and/or aggravated by the military service?

[2]. The petitioner joined the Indian Army on 14.09.1981 and admittedly he was not found suffering with any disease including diabetes at the time of enrolment. He continued to serve and was in due course of time promoted to the rank of Risaldar (Subedar). The petitioner served the Indian Army for 27 years 17 days till he was invalidated out on 30.09.2008 after placing him in the permanent low medical category on account of the disability caused by the ailment i.e. "Diabetes Mellitus Type-II (CD No.E-II)".

[3]. Alleging that the above stated disability/disease is attributable to his military service, the petitioner claimed disability element of pension but the same was declined. He then approached the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir. The Tribunal vide the impugned order dated 15.05.2012 has rejected the petitioner's claim primarily on two counts, firstly that in terms of the policy circular dated 25.01.2007 issued by the Director General, Armed Forces Medical Services Branch, the Release Medical Board is empowered to alter the decision taken by the previous Medical Board and in the instant case the Release Medical Board has recommended that the petitioner's disease is not attributable to military service, rather it was due to his life style. Secondly, as per the information taken out from the internet through 'Wikipedia', Type-II Diabetes are the most common and its primary cause is the 'life style factors' and 'genetics'. The opinion of the Release Medical Board has thus has been co-related and corroborated by the above stated information drawn from the internet, so as to turn down the petitioner's claim.

[4]. The proceedings of the Re-Categorisation Medical Board held on 08.10.2007 admittedly contained the following information/opinion:-

“17. Was the disability contracted in service ? (Y/N) YES

18. Was it contracted in circumstances over which he had no control? (Y/N) YES

19. Is the disability attributable to service? (Y/N) NO

20. It not directly attributable to service was it

aggravated by service? (Y/N) **YES Due to if so, please explain? Adverse dietary condition during service.**

Note: 1. Injury Report (for injury cases) 14 days charter of duties for IHD cases/any other relevant document required, is to be attached and endorsement made in column 19/20.
2 Column 17-20 should be completed only if they are not completed in initial/earlier board.

25. Instruction given to the individual by the President of the board **You are placed in low Medical catetory P3 (T-24) wef 08/10/2007 Medical board held on 08/10/2007 at 167 MH your Medical category is S1H1A1P3 (T-24) E1.”**

[5]. The Release Medical Board was held on 03.09.2008 and it gave the following opinion:-

“PART V				
OPINION OF THE MEDICAL BOARD				
1. Casual Relationship of the Disability with Service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravate d by service (Y/N)	Not connected with service (Y/N)	Reasons/Cause/ Specific condition and period in service
(a) DIABETES MELLITUS TYPE-II (ICD NO.E-II)	NO	NO	YES	1. Col-20 of initial Med Bd (AFMSF-15)dt-08-Oct-2007, not agreed to
(b)				2. Life Style disease onset in May-2007 at Mamun Cantt (Pathankot)
(c)				
(d)				
(e)				
Note: A disability “Not connected with service” would be neither Attributable nor Aggravated by service. (This is in accordance with instructions contained in 'Guide to Medical officer (Mil Pension)-2002')				
2. Did the disability exist before entering service ? (Y/N/Could be)				NO”

[6]. The Tribunal has turned town the petitioner's claim for disability element of pension relying upon the above reproduced

opinion of the Release Medical Board.

[7]. Having heard learned counsel for the parties and after giving our thoughtful consideration to the rival submissions, we find the opinion given by the Release Medical Board to be totally cryptic as it sans any reason of disagreement qua the opinion given by the Re-categorisation Medical Board. The petitioner was in the active military service for more than 27 years and was always subject to the strict discipline including daily physical and mental exercises which are compulsory for a military personnel like him.

[8]. The respondents do not allege in their written statement or otherwise that the petitioner was a stray case or found involved in any unusual habit or wanting in terms of the standards or military discipline. It is, thus, difficult to accept that the ailment was caused due to the petitioner's life style. Once the solitary reason assigned by the Release Medical Board cannot sustain for want of any supporting material circumstance, as a corollary thereto, the reasons assigned by the Re-categorisation Medical Board that the disease was attributable to the petitioner's military service due to adverse dietary conditions during the service, deserves acceptance.

[9]. The report produced before us and which was taken into consideration by the Release Medical Board also reveals that petitioner served in peaceful as well as field postings during his long service-career of 27 years. The possibility of the 'stress and nature of duties coupled with dietary conditions' being the real cause of ailment, therefore, cannot be ruled out.

[10]. It is true that the Release Medical Board, while recording their opinion as to causation, degree of disability and fitness for service will not allow their decision to be influenced by the proceedings of previous Medical Board but the Regulations for the Medical Services of the Armed Forces, 1983 clearly provides that if the Release Medical Board disagrees with the opinions expressed by previous Medical Board, then “they will state the grounds on which they base their disagreement.”

[11]. The Release Medical Board in the instant case has assigned only one reason namely, life style of the petitioner as the solitary cause of his disability. That reason, in the light of above discussion, cannot be accepted.

[12]. Needless to say that the percentage of disability is of no material consequence in this case. It has been rightly pointed out on the basis of various government circulars/policies that the petitioner is entitled to claim disability pension at the rate of 50 per cent as according to the Release Medical Board his disability ranges between 1 to 49%. Thus, the only question calls for determination is whether or not the cause of disability in the case of petitioner is attributable to his military service?

[13]. For the reasons afore-stated, we allow this writ petition; set aside the order dated 15.05.2012 (Annexure P-10) passed by the Tribunal; quash the order dated 20.02.2009 (Annexure P-3) vide which the petitioner's claim for disability pension was rejected and direct the respondent-authorities that, if so advised let the petitioner's

case be reconsidered by the Release Medical Board within a period of three months from the date of receipt of certified copy of this order, failing which the medical opinion given by the Re-categorisation Medical Board shall be treated and accepted as the final opinion and consequently, the disability element pension shall be released along with arrears from the due date within a period of three months thereafter.

[14]. Ordered accordingly.

**(SURYA KANT)
JUDGE**

12.01.2015

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**(RAJ MOHAN SINGH)
JUDGE**