

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal No.754 of 2012

1.M.Venkatesa Perumal (deceased)
2.V.Valli
3.V.Snegha
4.V.Buvaneshwari
5.V.Arul
(Appellants 3 to 5 are minors and
represented by their mother and
natural guardian 2nd appellant) Appellants

vs.

1. Union of India
Rep by its Secretary to Government
Ministry of Defence
Department of Pension & AC
New Delhi

2. Chief Controller Defence Accounts
(Pensions), G-3/IX Section
Draupathi Ghat, Allahabad - 211 014
State of Uttar Pradesh

3. The Commanding Officer/Officer in charge
Sena Seva Corps Abhilekh
(Pesu Parivahan), Army Supply
Corps Records (AT), Paharpur
Gaya - 823 005, State of Bihar

4. The Assistant Controller of Defence Accounts
Zonal Office
No.506, Anna Salai
Chennai - 600 018 Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order of the writ court dated 19.01.2009 made in W.P.No.12733 of 2005.

PRAYER: Petition filed Under Article m226 of the constitution of India Praying for the issurance of a writ of certiorarified mandamus calling for the records of the first respondent made in No. 7(1014) 99.D.(Pen.A & AC) dated 27.1.2000 and No.6(74)/2000/D(Pen.a&AC) dated 04.12.2002 and the order of the third respondent in No. 6386289/DP/Pen, dated 03.04.1998 and quash the same and direct the respondent to grant the claim of the petitioner for grant of disability pension and other benefits.

For Appellants : Mr.M.Selvaraj

For Respondent : Mr.V.Balasubramanian
for Mr.K.Ramanamoorthy, CG Counsel
R1 to R4

JUDGMENT

Challenge in this writ appeal is to an order dated 19.01.2009 made in W.P.No.12733 of 2005, by which, the writ court, declined to interfere with the orders dated 27.01.2000 and 04.12.2002 passed by the Secretary to the Government, Ministry of Defence, Department of Pension & AC, New Delhi, respondent No.1 as well as the order dated 03.04.1998 passed by the Commanding Officer/Officer-in-Charge, State of Bihar, respondent No.3 and consequently, refused to issue any direction to grant of disability pension to the appellant (since deceased). Legal representatives are pursuing the claim for disability pension.

2. The appellant (since deceased) joined Indian Army on 06.04.1988 and served for a period of eight years and eight months. While he was serving in 603 ASC Battalion (AM), he was admitted in the Command Hospital (Western Command) at Chandimandir in two spells. The first spell was between 26.09.1995 to 19.10.1995, when he was admitted on the ground of back pain and the second spell was from 12.12.1995 to 04.04.1996, for the complaint of PIVDL - 4/5 (OPLD). Once again, the appellant was admitted in Command Hospital, Air Force, Bangalore on 22.08.1996 by his family members for unprovoked physical aggression on his family members and neighbours. The Senior Advisor Psychiatry diagnosed the ailment as 'Schizophrenia' and therefore, he was considered to be unfit for further service in Indian Army, by the Medical Board and

recommended for invalidating him out of service, from Army, with effect from 31.12.1996.

3. The appellant had further contended that in terms Rule 13(3) read with Item III (iii) of the Army Rules, 1954, it is stated that, if a person is medically unfit for further service, he can be discharged only on the recommendation of the Invalidation Board. It was also stated by the Release Medical Board that the disease, which the appellant (since deceased) suffered, was neither attributable to nor aggravated by military service. It was a constitutional disease and not connected with service. He was placed under the low medical category of EEE (Psy).

4. The appellant's case for disability pension was forwarded to higher authorities. However, by order dated 03.04.1998, he was informed that his disability pension claim was adjudicated by CCDA(P), Allahabad in consultation with the Medical Advisor (Pension) attached to their office and that his disability Schizophrenia, was neither attributable to nor aggravated to military service. He was also informed that under the existing rules, he was not eligible for any disability pension. He was also informed that he could file an appeal against the said order to the Government of India, respondent No.1.

5. The appellant filed an appeal to the respondent. Government of India, by order dated 27.01.2000, rejected his appeal and informed the appellant that the disability, on account of which he was released from service, was a constitutional disorder. Upon perusal of his service/medical documents, the Appellate Medical Authority found that ID, was not connected with service. There was no history of CNS Infection/Trauma. There was no close time relation with any service related stress to the onset of ID. As the disability was regarded by the Medical Authorities, as neither attributable nor aggravated by duties of military service, he was not entitled to disability pension under the Rules. The appellant's second appeal to the Union of India was also rejected by an order dated 04.12.2002.

6. Being aggrieved by the same, he preferred W.P.No.12733 of 2005, contending inter alia that rejection of his claim for disability pension was arbitrary and improper. Reliance has been made to a decision of the Jammu & Kashmir High Court in Ex-Subedar Gurdass Singh vs. Union of India and others reported in 2001 (1) J&K Law Reporter 149. However, upon perusal of the same, writ court, observed that the disability in the said case arose out of an injury suffered, when the petitioner in that case, was travelling in a scooter, which was hit by a tipper

lorry and the question arose in that case was whether the accident arose out of his employment and whether he was entitled for disability pension on account of the injury suffered by him, and therefore, in that case the court held that the injury was directly attributable to service and was eligible for pension.

7. Per contra, before the writ court, the respondents placed reliance on an unreported judgment of a Hon'ble Division Bench of this court in R.Paramasivam v. Union of India in W.A.No.3143 of 2004 dated 27.06.2005, wherein, under identical circumstances, this court, has refused to judicially review the claim for disability pension. On the aspect of judicial review, the writ court also considered a case in Union of India vs. Baljit Singh reported in (1996) 11 SCC 315, wherein, the Hon'ble Apex Court, analysed Rule 173 of the Pension Regulations for the army. In Baljit Singh's case, the Hon'ble Apex Court has observed that when the Medical Board found that there is absence of injury/illness having been sustained or being attributable thereto, the High Court's direction to pay disability pension was not correct.

8. The writ court has also considered, a judgment of the Allahabad High Court, wherein a Rifleman was discharged from Army on the grounds that he was suffering from 'Schizophrenia'. Referring to paragraph 7(b) of the Appendix II referred to in Regulations 48, 173 and 185 of the Pension Regulations, 1961, the Allahabad High Court held that, if any disease has led to the individuals discharge, it shall be ordinarily deemed to have arisen in service, if the same was not recorded at the time of individual's acceptance for military service. But when the correctness of the said order was tested the Hon'ble Supreme Court in Union of India and others vs. Keshar Singh reported in 2007 AIR SCW 2760, reversed the decision of the Allahabad High Court. The writ court has also considered another decision in Union of India and others vs. Surinder Singh Rathore reported in 2008 AIR SCW 2890.

9. Being aggrieved by the dismissal of the writ petition, instant writ appeal has been filed on the grounds inter alia that the writ court ought to have considered that the appellant initially suffered back pain and thereafter, he was operated and when the said operation was not successful, due to mental strain, he was again admitted in Air Force Hospital, Bangalore and thereafter the Medical Board opined that the appellant was suffering from Schizophrenia and unfit for further service in Army and hence under Rule 13(3)III(iii) of the Army Rules, 1954, he was discharged from Army.

10. Referring to the Pension Regulation for the Army, 1961 and placing reliance on the recent decision of the Hon'ble Supreme Court in Dharamvir Singh vs. Union of India & Others reported in (2013) 7 SCC 316, Mr.M.Selvaraj, learned counsel for the appellant, contended that, at the time when the appellant entered military service, there was no disability or disease, and he suffered Schizophrenia only during service, and discharged from army and hence, disability pension ought not to have been denied.

11. Mr.V.Balasubramanian, learned counsel appearing for Mr.K.Ramamoorthy, learned Central Government Counsel for the respondents submitted that the Medical Board has opined that the appellant was unfit for further service in Indian Army and recommended for invalidating with effect from 31.12.1996 and the Board has also categorically stated that the disease, which he had suffered, was neither attributable nor aggravated by military service. He further submitted that when the opinion of the Medical Board, has been taken note of and orders were passed by the authorities denying disability pension, the same has been considered with reference to the decisions of the Hon'ble Apex Court and thus the writ court, has rightly declined to grant any relief. For the reasons stated supra, he prayed to sustain the orders.

Heard the learned counsel for the parties and perused the material available on record.

12. We have gone through the provisions referred to by the learned counsel for the appellant. In Dharamvir Singh vs Union of India & Others reported in (2013) 7 SCC 316, the appellant therein was enrolled as a sepoy in Corps of Signals of the Indian Army on 15.06.1985. He rendered nine years of service in Indian Army and he was boarded out of service with effect from 1st April, 1994 on the ground of 20% permanent disability, as he was suffering from "Generalised seizure (Epilepsy)". The Medical Board of the Army opined that the disability was not related to military service, on the basis of disability report and no disability pension was granted to him and when the appellant preferred a representation to the respondents therein, the same was rejected on the ground that disability suffered by the appellant was neither attributable nor aggravated by military service. The appellant approached the High Court for a direction to the respondents to grant disability pension. By observing that there was nothing on record to show that the appellant was suffering from any disease at the time of his initial recruitment in Indian Army, a learned single Judge, held that the disease, would be deemed to be attributable to or aggravated

by Army Service. Therefore, in terms of the Regulation 173 of Pension Regulations for the Army, 1961, a learned single Judge held that the appellant therein was eligible for disability pension.

13. Union of India, challenged the decision of the learned single Judge before a Hon'ble Division Bench. Placing reliance on the decision of Union of India and others vs. Keshar Singh reported in (2007) 12 SCC 675 and Rule 7, a Hon'ble Division Bench of the Himachal Pradesh High Court, reversed the judgment of the learned single Judge. Aggrieved by the same, the sepoy moved the Hon'ble Apex Court. On the pleadings and submissions, the Hon'ble Apex Court, framed the following questions.

1. Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance.

2. Whether the appellant is entitled for disability pension.

14. After considering the Entitlement Rules for Casualty Pensionary Awards, 1982, Pension Regulations for the Army, 1961 along with Appendix-II referred to in Regulations 1948, 1973 and 1985, Guide to Medical Officers (Military Pensions) 2002 published by the Ministry of Defence, Government of India, New Delhi, Regulation 173 of the Pension Regulation for the Army 1961 and Rules, and also of the decision in Om Prakash Singh vs. Union of India and others reported in (2010) 12 SCC 667, the Hon'ble Apex Court at paragraphs 28 to 33, held as follows:

28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14 (b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been 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. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above.

29. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease

could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows:

" (d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof. YES Disability is not related to mil service"

31. Paragraph 1 of 'Chapter II' - "Entitlement : General Principles" specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre-and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.

32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of

'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.

Finally, the Hon'ble Apex Court set aside the judgment of the Hon'ble Division Bench of the Himachal Pradesh High Court and directed the respondents therein, to pay the appellant, the benefit, in terms of the order passed by the learned single Judge granting disability pension.

15. Dharamvir Singh's case has been subsequently considered by the Hon'ble Apex Court in Union of India and Another vs Rajbir Singh reported in 2015(12) SCC 264, and while dismissing the appeals preferred by Union of India, at paragraphs 15 and 16, the Hon'ble Apex Court held as follows:

15. The legal position as stated in Dharamvir Singh's case (supra) 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. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while

dealing with cases of disability pension.

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 un rebutted. 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.

16. The legal position has been reiterated by the Apex Court in State of Haryana vs. Hussain decided on 29.06.2016.

17. Reverting to the case on hand and applying the principles of law decided in Union of India and Another vs Rajbir Singh reported in 2015(12) SCC 264, State of Haryana vs. Hussain decided on 29.06.2016 and Dharamvir Singh vs Union of India & Others reported in (2013) 7 SCC 316, applicable to grant of disability pension, there is nothing on record to indicate that at the time of entering into service, the appellant (since deceased), had any disease. He was found fit and joined the army on 06.04.1988. Material on record discloses that subsequently, he was admitted in hospital for back pain, thereafter, he was found to have suffered from 'Schizophrenia' and discharged from Army under Rule 13(3)(III)(iii) of the Army Rules. Decisions of the Hon'ble Apex Court in Union of India and Another vs Rajbir Singh reported in 2015(12) SCC 264, State of Haryana vs. Hussain decided on 29.06.2016 and Dharamvir Singh vs Union of India & Others reported in (2013) 7 SCC 316, are squarely applicable to the case on hand. Therefore, we are constrained to set aside the order of the writ court dated 19.01.2009 made in W.P.No.12733 of 2005. Consequently, the orders assailed in the writ petition are

also set aside. The writ petitioner, since deceased, ought to have been paid disability pension from the date of invalidation till his death.

Accordingly, writ appeal is allowed. However, there shall be no order as to cost. For computation of disability pension and payment, four months time is granted from the date of receipt of a copy of this judgment.

s/d-
Assistant Registrar (CS-II)

//True Copy//

Sub-Assistant Registrar

asr

To

1. Union of India
Rep by its Secretary to Government
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Department of Pension & AC
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+1 CC to M/s. M. Selvaraj, Advocate, sr 68199

+1 CC to M/s. K. Ramanamoorthy, Advocate sr 68133

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