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

Reserved on: 23.05.2017

% *Pronounced on: 14.07.2017*

\+ **W.P.(C) 2203/2015**

NEERAJ KUMAR SINGH ..... Petitioner
Through Mr.Mohan Kumar and Ms.Rashmi Singh, Advs.

versus

UNION OF INDIA & ORS ..... Respondents
Through Ms.Barkha Babbar, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. By way of the present petition, the petitioner prays for issuance of a writ in the nature of mandamus directing the respondents to pay 50% disability pension with effect from 8.6.2013 along with interest thereon.

2. The facts leading to the present petition, in a nut shell, are that the petitioner was enrolled in the Border Security Force (BSF) as a Constable on 15.04.2011 and after completion of basic recruit training

(BRT) from Subsidiary Training Centre (STC) at BSF Kharkan Camp, he had reported to 69 Bn, BSF on 24.02.2012.

3. Due to certain action of the petitioner, he was sent to Frontier Hospital, BSF, Malda. He was subsequently produced before Initial Medical Board at Patiram, West Bengal on 07.03.2013.

4. The Medical Board in its report dated 07.3.2013 declared him as suffering from "RHD with Severe AR with Mild MR" and declared him unfit for further service in BSF. The opinion given in answer of question Nos.2,3,4,6 and 8 of the report are relevant for the purpose of the present petition and are reproduced hereinbelow:

> *"2. Was the disability contracted in service? Yes.*
>
> *3. Was it contracted in circumstances over which he had no control? Yes.*
>
> *4. Is it directly attributed to condition service? No*
>
> *6. If not directly attributed to service, was it aggravated thereby & if so by what specific condition? Yes, due to stress and strain.*
>
> *8. Percentage of disability. 50%"*

5. The petitioner was thereafter produced before the Review Medical Board on 26.04.2013 and the opinion given on question No.2,3,4,6 and 8 are relevant for the purpose of present petition and are extracted below:

2. Was the disability contracted in service? Yes

3. Was it contracted in circumstances over which he had no control? Yes

4. Is it directly attributed to condition of service? No

6. If no directly attributable to service, was it aggravated there by and if so by what specific condition? Yes, due to stress and strain.

8. Percentage of disability. 50%"

6. Based on the above report, the petitioner was retired from service on ground of physical unfitness with effect from 07.06.2013.

7. The petitioner filed a writ petition, being WP(C) 5812/2013, before this Court for sanction and payment of 50% disability pension with effect from 08.06.2013. During the pendency of the above petition, the respondents reinstated the petitioner in service vide order dated 28.02.2014 and the said petition was disposed of vide order dated 28.08.2014 in view of the above reinstatement.

8. The petitioner on rejoining, was again medically examined by the Medical Board on 23.06.2014. This time around the opinion expressed by the Board on question Nos.2 and 6 are relevant and are reproduced herein below:

"2. Was the disability contracted in service : No

6. If not directly attributable to service, was it aggravated by thereby and if so, by what specific conditions: :Stress and strain."

9. The petitioner was thereafter produced before a Review Board on 18.12.2014, whose opinion on question Nos.2,3,4 and 6 are reproduced herein below:-

"2. Was the disability contracted in service: Yes

3. Was it contracted in circumstances over which he had no control: Yes

4. Is it directly attributable to conditions of service: No

6. If no directly attributed to service was it aggravated thereby and if so, by what specific conditions: Yes, due to stress and strain."

10. Based on the above report, the petitioner was retired from the service on ground of physical unfitness with effect from 20.12.2014. However, as disability pension was not granted to him, he has filed the present petition seeking the above mentioned relief.

11. The respondents in its counter affidavit have stated that as the petitioner had not completed 10 years of qualifying service and his disability was due to natural causes not attributable to government services, he was covered in Category A of the circular dated 29.07.2010 and was, therefore, not entitled to the disability pension.

12. Circular dated 29.07.2010, for determining the compensation payable for death or disability under different circumstances, categorizes employees into five distinct categories. Category A and B of the same are relevant for the purpose of the present petition and are reproduced herein below:

> *"For determining the compensation payable for death or disability under different circumstances, the cases are broadly categorized in five distinct categories which are as under:*
>
> *Category 'A': Death or disability due to natural causes not attributable to Government service. Example would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty etc.*
>
> *Category 'B': Death or disability due to causes which are accepted as attributable to government services or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work, environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples."*

13. A bare reading of the above category(s) would show that distinction is drawn between disability due to natural causes and disability due to causes "attributable to government services" or "aggravated by the government services". In latter cases, disability Pension in terms of Clause V of the said circular would be payable.

14. As has been extracted above, baring the report dated 23.06.2014, all other medical reports have affirmed that the disability was contracted in service and was aggravated thereby.

15. The reliance of the respondents on the answer given to question 4 in these reports is unfounded as we found that question 4 is wrongly framed. It seeks an opinion of whether the medical condition is "directly" attributable to condition of service. Category B in the circular dated 29.07.2010 does not used the word "directly" and would, therefore, cover cases other than where the disability is caused by reasons attributable to government services, or when aggravated by government service, i.e. having causal nexus with the government service.

16. The expression "attributable to" is of significance and when read with the expression "aggravated by government service", discloses the legislative intent that the expression "attributable to" is not to be read in a restrictive manner or given a narrow meaning.

17. The expression "attributable to" has been interpreted under the Income Tax Act, 1961 as a word of wider connotation than "derived from". The expression "attributable to" implies that "for a result to be attributable to anything it must be wholly, or in material part, caused by it". In **India Leather Corporation (P) Ltd. Commissioner of Income Tax**, (1997) 10 SCC 115 referring to Stroud's Dictionary, 5th Edition, Vol.I, page 223, it was held that causal connection, which is sufficiently proximate, is necessary. The causal connection need not be absolutely direct. Such direct evidence may be impossible to get in

case of disability or death. It should be sufficiently plausible. What is to be ruled out is whether the disability or death was due to natural causes and covered by category A. Therefore and thus importance of opinion given by the experts in the field i.e. doctors, carries weight and of significant importance.

18. In the present case, the medical reports had clearly opined that the disability was contracted in service and even though not directly attributable to service, was aggravated thereby. There is no record or material to show that the petitioner was suffering from the said disability at the time of his appointment or that the same could not have been detected at the time of his appointment.

19. In view of the above, we are of the opinion that the petitioner is entitled to grant of disability pension in terms of the circular dated 29.07.2010 with effect from his retirement on 20.12.2014. The respondents would quantify the amount and pay the same within a period of two months from the date of receipt of this order/judgment. The petition is allowed in the above terms with no order as to costs.

NAVIN CHAWLA
(JUDGE)

SANJIV KHANNA
(JUDGE)

JULY 14, 2017
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