

\$~28.

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

+ W.P.(C) 11118/2018 and CM APPL. 43216/2018

EX CADET NISHANT SINGH Petitioner

Through: Mr. Mohan Kumar, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Ravi Prakash, CGSC with

Mr. Farman Ali and Mr. Varun Pathak, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **15.10.2018**

1. The petitioner seeks directions to the respondents/Indian Army to grant him disability pension on the ground that the disability suffered by him, is attributable and aggravated by Military service.

2. The brief facts of the case as culled out from the records are that the petitioner was inducted by the Indian Army in May, 2000. On 07.05.2000, the petitioner received joining instructions to report for training at the Officers Training Academy, Chennai. While undertaking military training, the petitioner suffered a seizure on 06.09.2000 and on being admitted in the Military Hospital, he was diagnosed with 'Neurocysticercosis', an ailment wherein a cyst develops in the brain on account of "worm infestation". On 25.09.2000, the petitioner was issued a notice to show cause as to why he should not be invalidated from service on medical grounds. On 15.11.2000, the petitioner appeared before the Release/Invalidating Medical Board and was placed under the supervision of a Senior Neurologist, who concluded that he ought to be released from service on account of low medical category. His disability was assessed at 15 to 19%. In view of the aforesaid

medical assessment done in respect of the petitioner, he was invalidated from the Indian Army on 14.12.2000.

3. After almost eighteen years reckoned from the aforesaid date, when an actionable cause of action had arisen in his favour, the petitioner has woken up to file the present petition claiming *inter alia* that the respondents ought to grant him disability pension/ex-gratia award on the ground that his disability was attributable and aggravated by Military service and that the action of the respondents in declining to do so, violates Articles 14 and 16 of the Constitution of India.

4. On perusing the documents filed by the petitioner alongwith the writ petition, it transpires that the Board had specifically opined that the petitioner was suffering ‘Neurocystercosis’ due to consumption of pork meat before joining the Officers Training Academy. In this context, the submission made by the petitioner to the respondent, vide his letter dated 25.09.2000, gains significance. In the said letter, the petitioner had stated as follows:-

“Sir,

1. Reference Military Hospital Chennai letter No.MH/387/A/GC Dated 25 Sep 2000.

2. I, No.20826 GC Nishant Singh am in receipt of the show cause notice, dated 25 Sep. 2000 issued to me by the President Medical Board, MH Chennai. I hereby accept the findings and decision of the above invalidment Medical Board and I will not be appealing to higher authorities against the findings and decisions of the above invalidment Board within the stipulated period of 15 days as per the provisions of para 424(c) of the AFMUF-1962 and No.513/71.

3. I am also aware that in the event of my failure to put up a proper appeal within the next 15 days to COAS through the

President Medical Board of invaliding Medical board, the medical and other administrative authorities will be left with no choice except to process to my invalidment Medical board proceedings for the 'NEUROCYSTICERCOSIS' for its considerations as per para 242(c) (III) of AFMUF-1962.

5. The very fact that the petitioner had stated that he had accepted the decision of the Medical Board to invalidate him and that he did not propose to challenge the findings of the Medical Board by filing an appeal, explains the absence of any explanation for the delay in approaching the Court for reliefs. We may also note that the petitioner had submitted a first appeal to the respondents after a passage of 15 years, only on 08.08.2015, which was also rejected on 27.06.2016. Merely because a second appeal was filed by the petitioner on 25.07.2016 and the same is pending, cannot be treated as a sufficient cause for this Court to condone such an inordinate delay. Even on facts, we do not find any force in the submission made by learned counsel for the petitioner that the petitioner had suffered a disability which is attributable to Military service. On the contrary, the findings of the Medical Board were clear and the same had duly been accepted by the petitioner without any reservation, as is apparent from the records.

6. For the aforesaid reasons, we do not find any merit in the present petition, which is accordingly dismissed in *limine*, alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 15, 2018/rkb/na
W.P.(C) 11118/2018

Page 3 of 3