

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

205

CWP No. 25211 of 2014
Date of Decision:04.03.2020

Surender Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ram Avtar, Advocate for
Mr. Ramesh Malik, Advocate for the petitioner.

Mr. Aseem Aggarwal, Advocate for the respondents.

HARSIMRAN SINGH SETHI, J.(Oral)

In the present writ petition, the claim of the petitioner is that the petitioner is entitled for the disability pension, which has been rejected by the respondents vide impugned order dated 20.10.2014 (Annexure P-3). The prayer of the petitioner is for grant of the disability pension, which he is entitled for under the Rules governing the service with effect from the date the petitioner was invalidated alongwith arrears and interest.

The facts mentioned in the writ petition are that the petitioner was enrolled in the Border Security Force on 23.08.1995, under the category of sports person. While the petitioner was in service, he was posted at various places including Jammu. Starting from the year 2002, the petitioner showed abnormal and erratic

behaviour with violent outbursts. He used to complain the feeling of suffocation and used to remain alone and also had aggressive fighting tendency. For the said ailment, the petitioner remained hospitalized on various occasions and ultimately, the petitioner was assessed by the Medical Board as to whether he was fit to be retained in service or not. The outcome of the said assessment which was done by the Medical Board on 16.09.2006, is as under:

'1 No954554385 Rank Constable Name Surender Singh of 12 Bn BSF have appear this day of 16th Sept 06 before the medical board, BSF Hospital R.K. Puram N/Delhi.

Sd/-xxx

Signature of individual

OPINION OF THE BOARD

01 Finding of the Board:- The Board having examined No. 95455438 Constable Surender Singh of 12 Bn BSF are of the opinion that he is suffering from AFFECTIVE PSYCHOSIS and is considered UNFIT for further service in BSF.

2 Was the disability in service?

YES

3 Was it contracted in circumstances over which he has control?

YES

4 Is directly attributable to condition of service?

NO

5 If, so, by what specific condition?

NA

6 If not directly attributable to service, was it aggravated there by and if so, by what specific condition?

STRESS AND STRAIN

7 Medical category recommended.

S5H1A1P1E1

8 Percentage of disability

70%

9 Period for which the above medical category
awarded

PERMANENT

10 further treatment/investigation required

AS ADVISED BY PHYCHIATRIST

11 Period of leave recommended if any

NA

12 Next board due on

NA

13 Fit/unfit for civil employment

NA'

On the basis of the said opinion of the Medical Board, the petitioner was discharged from the service with effect from 29.11.2006.

At the time of discharge, the petitioner was not granted the disability pension keeping in view the opinion of the Medical Board, wherein, it was stated that the disease due to which the petitioner is being invalidated out, is not directly attributable to the condition of service. The petitioner claimed the benefit of the disability pension by the issuance of a demand notice and the said demand was rejected by the respondents by stating that the disability/disease which the petitioner suffered due to which, he was invalidated out, was not attributable to the condition of service and therefore, he is not entitled for the disability pension as being claimed for. The said order of rejection of the claim of the petitioner dated 20.10.2014 (Annexure P-3) is under challenge in the present writ petition.

Upon notice of motion, respondents have filed the reply whereby they have defended their action of not granting the petitioner disability pension. In the reply, once again it has been stated that though the petitioner was found unfit to be retained in the service due to the fact that he was suffering from **AFFECTIVE PSYCHOSIS** but as the medical board held that the said disease was not attributable to the service, the petitioner is not entitled for the grant of the benefit of disability pension. The relevant paragraph of the reply is as under:

' That as per the Medical Board proceedings Part-I & Part-II dated 16.09.2006, the petitioner was suffering from AFFECTIVE PSYCHOSIS and considered UNFIT for further service in BSF due to which he was placed in permanent factor of Medical Category S5H1A1P1E1 with 70% disability. The disease of the petitioner was aggravated by stress & strain, which was not attributable to Govt. bonafide duty due to which he was boarded out from service w.e.f. 29.11.2006 with pensionary benefits. Therefore, in the light of instructions contained in DOP & PW OMS, the petitioner is not entitled for disability element.'

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is an admitted fact that the petitioner has been invalidated from service due to the reason the petitioner was suffering from AFFECTIVE PSYCHOSIS due to which he could not have been retained in service as he was unfit for the same. The disability pension has been denied to the petitioner only on the basis that the Medical Board has opined that the said disease is not directly

attributable to the condition of service.

The respondents have nowhere contended in the reply or even in the impugned order that even at the time of the recruitment, the petitioner was suffering from the said disease. Once, the petitioner who was an eminent sportsman, was recruited in the category of Sports, it cannot be said that the petitioner was suffering from the said disease, the cause of which is only stress and strain, even at the time of the recruitment in 1996. Even the Medical Board, which examined the petitioner, has stated that the stress and strain of the service has aggravated the said disease and the percentage of disability was assessed as 70%.

Once, there is nothing on record to show that the petitioner was unfit at the time of recruitment or was suffering from the said disease, it can be safely held that the petitioner suffered the said disease while in service as the causes of the same were stress and strain and the said cause aggravated the disease.

Further, the Medical history of the petitioner has been placed on record by the respondents as Annexure R-5. In the said medical history, it has been stated that the petitioner was alright till the year 2001 and the symptoms of the stress and strain became visible starting from the year 2002 onwards from which date he was hospitalized on various occasions. The relevant portion of the Medical history of the petitioner, which has been annexed by the respondents themselves is as under:

History of Present illness:- individual was alright till year 2001,

in July' 2002 individual was in quarter guard for 02 days. Individual was transferred to his unit 12 Bn BSF which was at Bareilly (U.P). At that time his unit was IS Duty. Then he was referred to Jammu medical college for above said complaints. Where he was investigated and diagnosed has a case of Psychosis and treated on OPD basis and later on admitted there, but he could not responded with the treatment. After that he was referred to AIIMS N/Delhi and reported FHQ BSF Hospital, R.K. Puram N/Delhi on 26.07.2003. Since than the individual under treatment at Psychiatry OPD of AIIMS N/Delhi and reviewed periodically remained on Anti Psychosis drugs. In spite of being on long treatment the patient his not responding with the treatment. He is on regular treatment and remained admitted in FHQ BSF Hospital N/Delhi.'

Once, according to the respondents themselves the petitioner was fit after he was appointed in service in the year 1995 till the year 2001, hence no conclusion other than that he developed the disease while in service due to the stress and strain can be drawn and the same has to be attributed to the service which the petitioner was rendering in the Border Security Forces.

Delhi High Court while deciding W.P(C) 2203 of 2015 titled as **Neeraj Kumar Singh Vs. Union of India and others** in some what similar circumstances held that in case an employee was fit at the time of the recruitment and due to the stress and strain of the service developed a disease, the same has to be attributed to the service and the benefit of disability pension cannot be denied merely on the opinion of the Medical Board which has only stated that the

said disease is not directly attributable to the service. The relevant paragraph of **Neeraj Kumar Singh's case (supra)** is as under:

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 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.

A bare perusal of the above would show that the opinion of the medical board given in the case of the petitioner is identical to that given in **Neeraj Kumar Singh's case (supra)** and a similar opinion has already been interpreted by the Delhi High Court that according to the instructions issued by the Govt. of India, for grant of disability pension, there is no requirement that the disease is directly attributable to the service. In case the disease is attributable to the military service which should be clear from the facts and circumstances, an employee is entitled for the grant of disability pension, if he has been discharged from service due to the said disease.

In the present case as well, the Medical Board has already recorded a finding that the disability was contracted by the petitioner during the service and there is nothing to show that the petitioner was suffering from the said disease at the time of his recruitment and

further it is only the stress and strain of the service, which has aggravated the disease suffered by the petitioner, hence, the result is invariably that the petitioner suffered the disease while in service due to the stress and strain of the service and therefore is attributable to the service. Once, the disease for which the petitioner has been invalidated out is attributable to the service, the petitioner is entitled for grant of disability pension and the denial of the same by the respondents is contrary to the medical report, which are being relied upon by the respondents themselves.

The impugned order dated 20.10.2014 (Annexure P-3) is set aside, the petitioner is held entitled for the grant of disability pension in respect of the ailment which he suffered during the service, for which he was invalidated out with effect from 29.11.2006. The petitioner be paid the disability pension, for which he is entitled for under the Rules by treating that the disease, for which the petitioner was invalidated out, was attributable to the service, from the date he was discharged along with arrears. Let the amount for which petitioner becomes entitled for under this order be calculated and released to him within a period of three months from the receipt of the certified copy of this order.

[HARSIMRAN SINGH SETHI]
JUDGE

March 04, 2020

rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no