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

% **Date of decision: 12th March, 2020**

+ **W.P.(C) 2214/2018**

EX. CT. SHARIKANT TIWARI **..... Petitioner**

Through: Mr.Arun Srivastava, Advocate.

versus

UNION OF INDIA AND ORS. **..... Respondents**

Through: Mr.Rakesh Kumar, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

RAJIV SAHAI ENDLAW, J.

1. The question of adjudication in this petition is, whether the petitioner suffers from disability of category 'A' or disability of category 'B', within the meaning of Office Memorandum dated 3rd February, 2000 of the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Government of India, for the purposes of computation of his disability pension. While the respondents have held the petitioner to be suffering from disability of category 'A', the petitioner claims his disability is of category 'B'.

2. The petitioner was employed as a Constable with the Border Security Force and during the period from October 1990 to December 1991, while serving as a Commando, National Security Guard at New Delhi, developed pain in both knee joints, which gradually spread to shoulders and other joints. The same was diagnosed as Osteo-Arthritis. The petitioner was

finally retired on 19th October, 2013 as ‘invalidated out’ on medical grounds, with all pensionary benefits as admissible under the CCS Pension Rules, as the petitioner was suffering from 50% disability due to advanced knee Osteo-Arthritis with knee deformity with involvement of multiple joints, limited movement and obesity.

3. The Office Memorandum dated 3rd February, 2000 (supra) on the subject of “special benefits in cases of death and disability in service-payment of disability pension/family pension-recommendations of the 5th Central Pay Commission”, categorises death/disability for determining the compensation payable, in 5 distinct categories. However we in this case, are concerned only with category ‘A’ and category ‘B’ which are as under:

“Category ‘A’ : Death or disability due to natural causes not attributable to Government service, Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty, etc.

Category ‘B’ : Death or disability causes which are accepted as attributable to 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.”

4. The counsel for the petitioner, to demonstrate that the disability of the petitioner falls in category ‘B’, has drawn attention to, i) the findings of the Medical Board which examined the petitioner on 5th January, 2000 and opined that the petitioner is suffering from Rheumatoid Arthritis and was unfit for further service in Border Security Force; the said opinion, while

answering the questions in prescribed format, further opined that though the disability was contracted in service, however was contracted in circumstances over which the petitioner had no control and was not directly attributable to conditions of service and though the disability was not directly attributable to condition of service but was aggravated thereby “due to stress and strain”; ii) the findings of the Review Medical Board which examined the petitioner on 19th July, 2000 and opined that the petitioner was suffering from effects of Rheumatoid Arthritis and was considered unfit for further service in Border Security Force; that the disability was contracted in service and that the disability was contracted in circumstances over which the petitioner had no control and that the disability was not directly attributable to conditions of service and though the disability was not directly attributable to condition of service, but was aggravated thereby, “due to stress and strain”; iii) the findings of Medical Board which examined the petitioner on 13th January, 2013, to the effect that the petitioner was suffering from advance Osteo-Arthritis with multiple joints involvements with movement restriction with various deformity of both leg knees with DM type-II and hypertension with obesity and was unfit to remain further in service and answered the queries similarly as in the earlier two findings of the Medical Board, save that this time, while opining that the required disability though was not directly attributable to service, was aggravated thereby “due to climatic conditions and stress, strain of service condition”; and iv) the findings of the Review Medical Board which examined the petitioner on 17th June, 2013 and opined to the same effect as the Medical Board.

5. While the Medical Board after examining the petitioner on 5th January, 2000, had reported the percentage of disability as 40%, the Review Medical Board which examined the petitioner on 19th July, 2000 found the disability at 45% and subsequent Medical Boards found the disability to be 50%.

6. The contention of the counsel for the petitioner is, that since the Medical Boards have consistently found the disability of the petitioner, though not attributable to service but aggravated due to service, the petitioner falls in category 'B' and not in category 'A'.

7. The reason given for the finding of, the disability being aggravated by service, is 'stress and strain' or, besides the stress and strain 'climatic conditions'.

8. We have enquired from the counsel for the petitioner, the climatic conditions which aggravated the disability.

9. The counsel for the petitioner states, a) that on 13th August, 2013, the petitioner was posted at Jammu and Kashmir and was discharged from service on 19th October, 2013 while still at Jammu and Kashmir; and, b) the petitioner preferred W.P.(C) 6682/2013 impugning his discharge from service and vide interim order wherein there was stay and owing thereto the petitioner continued in service till 20th January, 2015 when W.P.(C) 6682/2013 was ultimately dismissed.

10. However the Medical Boards reporting climatic condition to have aggravated the disability of the petitioner, examined the petitioner on 13th January, 2013 and 17th June, 2013 i.e. prior to posting of the petitioner at Jammu and Kashmir on 13th August, 2013. Thus the climatic conditions

during the posting of the petitioner at Jammu and Kashmir cannot be said to be a reason for aggravating the disability of the petitioner.

11. Though there is nothing pleaded by the petitioner qua the climatic conditions aggravating his disability, but the counsel for the petitioner has generally referred to the proceeding of the Medical Board on 17th June, 2013 detailing the history of the illness of the petitioner. From a reading of the same, it cannot be said that the petitioner, at any point of time between 2000 and 2013 or prior to 2000, was posted at a place with extreme climatic conditions, to aggravate the disability.

12. The other reason given for the finding of the disability having been aggravated by condition of service is of stress and strain. We have again asked the counsel for the petitioner, whether the petitioner has pleaded any reason for stress and strain of service.

13. The counsel for the petitioner replies, that the working/employment itself is stress and strain. Else, it is repeatedly said, that once the Medical Board has returned the finding of the disability being aggravated by condition of service, that is enough.

14. We have enquired from the counsel for the petitioner that if mere employment is stress and strain, whether every employee would be entitled to disability pension.

15. Counsel for the petitioner states that every employee suffering from disability would suffer from stress and strain of employment.

16. Stress and strain are general terms and neither do the findings of any of the Medical Boards specify what was the stress and strain of employment or service nor has the petitioner chosen to do so. It is well nigh possible that the stress and strain reported by the Medical Board, is on account of

personal/matrimonial/filial and not official/employment reasons. Else, Category 'A' aforesaid, which envisages disability not attributable to Government Services and/or not aggravated by Government Service, would be redundant as every disability would be attributable to Government Services or aggravated by stress and strain of Government Service.

17. Thus, whenever aggravation on account of stress and strain of employment is pleaded or reported, it is incumbent on the petitioner to detail and give particulars of the stress and strain and in the absence thereof, there is no presumption that the stress and strain which an employee is found to suffer from, is on account of employment or conditions of service.

18. As far as argument of "the Medical Boards having reported so" is concerned, once the Office Memorandum dated 3rd February, 2000 envisages Category 'A' i.e. disability not attributable to or not aggravated by service/service conditions, the Medical Board is required to state specifically, what in or what condition of service caused stress and strain and even it fails to do so, it is incumbent on the seeker to specifically plead the stress and strain of service or service condition. There is no presumption of Government Service causing stress and strain.

19. Though the counsel for the respondents has also contended that the petitioner, in the year 2004, on completion of 20 years of service was eligible for voluntary retirement and was given an opportunity, still he chose to continue and that the petitioner even after discharge on 19th October, 2013 challenged his discharge and obtained interim order whereunder he continued to be in service till dismissal of the petition on 28th January, 2015, but in my view the same would be of no relevance for the present purposes.

20. The counsel for the respondents has also drawn attention to the order dated 28th January, 2015 of dismissal of W.P.(C) 6682/2013 recording that the petitioner, after was detected with Osteo-Arthritis, has always been given static duty and every attempt has been made to see that his duty could be in a hospital itself or as close to hospital, from where the petitioner can avail medical aid in case of emergency. It is thus argued that the question of the stress and strain of condition of service aggravating the disability of the petitioner does not arise.

21. The counsel for the petitioner now states that the Office Memorandum dated 3rd February, 2000 is for the benefit of the soldiers and should be interpreted in case of doubt in favour of the soldier.

22. Undoubtedly so; but the petitioner herein is found to have failed to explain the climatic conditions or the stress and strain to be on account of his service condition, to be able to fall in category 'B', of the disability having been aggravated by government service.

23. No case for interference with the decision of the respondents, finding that the petitioner suffers from disability of category 'A' within the meaning of Office Memorandum dated 3rd February, 2000, is made out.

24. Dismissed.

RAJIV SAHAI ENDLAW, J

SANGITA DHINGRA SEHGAL, J

MARCH 12, 2020
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