

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

CWP-16720 of 2020
Date of decision 02.03.2021

Chaman Lal

...Petitioner

Vs.

Union of India and ors.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. M.S. Dhami, Advocate
for the petitioner.

Mr. Rohit Verma, Advocate
for respondent Nos. 1 to 4.

Ritu Bahri, J.

Petitioner, Ex NK/TA Chaman Lal has knocked the door of this Court, seeking issuance of writ in the nature of certiorari for quashing of impugned order dated 06.03.2006 (P-3), order dated 27.03.2008 (P-5) and order dated 25.11.2010 (P-6) whereby his claim for disability pension, has been rejected.

Petitioner was enrolled in the Army on 28.10.1988 as Sepoy/TA and was thereafter discharged before 15 years of service on medical ground i.e WASTED LEG SYNDROME (RT). In August, 1999, petitioner felt pain in his right leg, medically diagnosed as "WASTED LEG SYNDROME (RT) and was placed first time in low medical cat 'CEE (TEMP)' w.e.f 11.01.2000 and subsequently w.e.f 11.01.2001 was placed in medical category 'BEE (Permanent)'. As per release Medical Board Proceedings dated 18.10.2002, which was conducted at the time of his discharge, the medical category of the petitioner i.e SIHIAIP2E1, with the

disability “WASTED LEG SYNDROME (RT) @ 30% for life. Petitioner filed appeal before Armed Forces Tribunal at Chandigarh-respondent No. 5, which was dismissed, vide order dated 06.03.2006 (P-3). Petitioner then filed second appeal before Defence Minister's Appellate Committee on pension, which was also dismissed vide order dated 27.03.2008 (P-5). Lastly, the petitioner approached the learned Armed Forces Tribunal at Chandigarh for grant of disability pension, which was dismissed, vide order dated 25.11.2010 (P-6)

Learned counsel for the petitioner submits that the petitioner is entitled for grant of disability pension as per Regulation No. 173 and 189 of Pension Regulations for The Army, 1961 (for short 'Regulations 1961'). Learned counsel for the petitioner states that the claim of the petitioner for grant of disability pension has been wrongly rejected on the grounds mentioned below:-

- (i) The disability of the petitioner is neither aggravated nor attributable to Army Service
- (ii) The disease is constitutional disorder.
- (iii) The disease is idiopathic condition.

Learned counsel for the petitioner is relying upon a judgment of Hon'ble the Supreme Court in a case of ***Dharamvir Singh vs. UOI and others, 2013 (3) SCT 778*** whereby the Rules relating to disability pension, have been examined in detail. It has been observed 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.

On the other hand, learned counsel appearing for respondent Nos. 1 to 4 has argued that before discharge from service, a show cause notice was issued to the petitioner, vide 14 Medium Regiment Letter No. 323801/487/A/ dated 22.09.2002 to which petitioner gave his reply. Reference has been made to release Medical Board Proceedings dated 18.10.2002 (P-2), which were conducted at the time of his discharge, whereby his disability was regarded as neither attributable to nor aggravated by military service. The degree of disability was assessed at 30% for life long.

Mr. Verma has further argued that petitioner is not entitled to Disability Element in terms of Regulation No. 173 of Regulations 1961 Part I. The petitioner was granted Service Element w.e.f 01.01.2003, vide PCDA (P) Allahabad PPO No. D/010022/2004 dated 25.02.2004. As per Regulations 173 of Regulations 1961, Disability Element is granted to an individual, who is invalidated out of service on account of a disability, which is attributable to or aggravated by military service and is assessed at 20 per cent or above. In the present case, the disability of the petitioner was regarded as neither attributable to nor aggravated by military service by the

duly constituted release medical board i.e Competent Medical Board, PCDA (P) Allahabad i.e Competent Pension Sanctioning Authority as well as first Appellate Committee and second Appellate Committee. The disease of the petitioner i.e Waste Leg Syndrome is a genetic disease and is also known as Muscle Loss. The said disease has no connectivity to the Military service and thus, has been rightly declared as NANA (Neither Attributable nor aggravated by military service).

It has further been argued that the petitioner has approached this Court after a delay of 10 years, as the impugned order has been passed on 25.11.2010. The writ petition deserves to be dismissed on the sole ground of delay and latches.

Reference has been made to judgment of Hon'ble the Supreme Court of India in a case of *Ex CFN Narsingh Yadav (No. 14666828M) vs. Union of India and others, 2019 (4) S.C.T 542* whereby the claim of the appellant for grant of disability pension was rejected by Armed Forces Tribunal, Lucknow and against this order, he approached Hon'ble the Supreme Court. The appellant was discharged from Army on the ground of his non-suitability being suffering from Schizophrenia. He was boarded within 3 ½ years of his service. The appeal was dismissed on the ground that there is no such infirmity in the report of the Medical Board, which may warrant reconsideration of the physical condition and the extent of disability by the Review Medical Board. It has been held that it is not the mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. It has been further held that even if he was suffering from any mental disorder prior to enrollment, the same could not be detected, as there were

intervals of normality. The appellant was posted in peace station as vehicle mechanic. Neither nature of job nor place of posting was such, which could have caused stress and strain leading to disability as attributed to or aggravated by military service. The entitlement of disability pension not to be considered unless clearly established that cause of such disease were adversely affected due to factors related to conditions of military service. In para No. 17 to 21, it has been observed as under:-

“17) The 1982 Rules classify the diseases which are affected by climatic conditions, stress and strain and dietary complications. The stress and strain cause the following injuries as per the said classification of diseases:

- “(a) Psychosis and psychoneurosis.*
- (b) Bronchial Asthma.*
- (c) Myocardial infarction, and other forms of IHD.*
- (d) Peptic ulcer.”*

18) Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.

19) The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

20) In the present case, clause 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that Schizophrenia is presumed to be attributed to or aggravated by military service.

21) Though, the opinion of the Medical Board is subject to judicial review but the Courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.”

We have heard learned counsel for the parties at some length, who have taken us through the impugned orders. It is not in dispute between the parties that on the date of recruitment of the petitioner in the Army, he was subjected to medical tests and found fit. It is also not in dispute that the petitioner was not suffering from any disease at the time of joining of his service. The petitioner was discharged from service, before completing 15 years of service. The petitioner has suffered “Wasted Leg Syndrome (RT) with disability of 30% for life. The said disease has been first time diagnosed after about 11 years of service with the respondents, in August 1999. There is no other material on record to support the version of the respondents like past history relating to disease suffered by the petitioner, any medical diagnosis etc. Pursuant to direction given by the Appellate Committee on Second Appeal, the petitioner appeared before 2nd Appeal Medical Board vide DGAFMS sanction letter dated 12.10.2006. The petitioner was brought before Appeal Medical Board at Base Hospital Delhi Cantt on 26.03.2007 ***wherein the disability of the petitioner was regarded as Neither Attributable to Nor Aggravated by military service and also not connected with military service, as the disease is an idiopathic disorder.***

The question for consideration before this Court in the present writ petition is that whether as per Rules, the petitioner is entitled to disability pension, keeping in view the fact that the Medical Board has

given its opinion that disability of the petitioner was regarded as Neither

Attributable to Nor Aggravated by military service?

The petitioner was enrolled in the Regiment of Artillery on 27.10.1988 and was discharged from service w.e.f 31.12.2002 (AN) being placed in medical category lower than SHAPE-I and not up to prescribed military standard under item III (v) of the table annexed to Rule 13 (3) of Army Rule 1954.

Reference can be made to Regulation 173 of Pension Regulations for the Army, 1961 which relates to the primary conditions for the grant of disability pension and reads as follows:

“Regulation 173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”

From a bare perusal of the Regulation above, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is attributable to or aggravated by military service and (ii) whose disability is assessed at 20% or over unless otherwise it is specifically provided.

In the present case, the disability of the petitioner is assessed at 30% but as per release Medical Board Proceedings dated 18.10.2002 (P-2), which was conducted at the time of his discharge, his disability was regarded as neither attributable to nor aggravated by military service.

Reference at this stage can be made to Rule 5, 9 and 14 of Appendix-II of Entitlement Rules for Casualty Pensionary Awards, 1982, which reads as under:-

“Rule5 . The approach to the question of entitlement to casualty

pensionary awards and evaluation of disabilities shall be based on the following presumptions:

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a) member is presumed to have been in sound physical and mental condition upon entering except as to physical disabilities noted or recorded at the time of entrance.

b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.” From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

“Rule 9. ONUS OF PROOF- The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.”

“Rule 14. DISEASE- In respect of diseases, the following rule will be observed:-

(a)Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b)A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c)If a disease is accepted 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.” As per clause (b) of Rule 14 a disease which has led to an individual's discharge or death will ordinarily be

deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service.

As per Rule 5 aforesaid, presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

In ***Dharamvir's case (supra)***, Hon'ble the Supreme Court has examined in detail Regulation 173 of Regulations 1961, Rule 5,9 and 14 of Entitlement Rules for Casualty Pensionary Awards, 1982 and Rule 423 of General Rules of Guide to Medical Officers (Military Pension) 2002. After examining the Rules, the appeal was allowed and it was held that ***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 the 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 para No. 24, 25 and 28, it has been observed as under:-

“24. The Rules to be followed by Medical Board in disposal of special cases have been shown under Chapter VIII of the “General Rules of Guide to Medical Officers (Military Pensions) 2002. Rule 423 deals with “Attributability to service” relevant of

which reads as follows:

“423(a) For the purpose of determining 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. It is however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officers, in so far as it relates to the actual cause of the disability or death and the

circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.”

25. Therefore, as per Rule 423 following procedures to be followed by the Medical Board:

- (i) Evidence both direct and circumstantial to be taken into account by the Board and benefit of reasonable doubt, if any would go to the individual;*
- (ii) a disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of individual's acceptance for service in Armed Forces.*
- (iii) If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease will not be deemed to have been arisen during military service the Board is required to state the reason for the same.*

“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.

Reference can now be made to judgment of Hon'ble the Supreme Court of India in a case of ***Union of India and another vs. Rajbir Singh, 2015 (3) S.C.T 42*** wherein the SLP was dismissed which was filed against orders passed by the Armed Forces Tribunal holding the respondent entitled to claim disability pension under the relevant Pension Regulations of the Army. It has been held that there is neither any note in the service records of the respondent at the time of entry into service nor have any reasons 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. Initial presumption that the respondent was physically fit and free from any disease and in sound physical and mental condition at the time of entry into service, remain un rebutted. In para No. 11, 14 and 15, it has been observed as under:-

11. From a conjoint and harmonious reading of Rules 5, 9 and 14 of Entitlement Rules (supra) the following guiding principles emerge: (i) a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance; (ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service; (iii) the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service; and (iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical

examination prior to acceptance of service, reasons for the same shall be stated.

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

"33. 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 the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the 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."

*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.

Reference can now be made to judgment of Hon'ble the Supreme Court of India in a case of ***Satwinder Singh vs. Union of India and others, passed in CA No. 1695-2016, decided on 11.02.2016*** wherein appellant was discharged from service on the ground of his being in low medical category 'EEE'. ***His claim for disability pension was rejected on the ground that disease contracted by him was neither attributable to nor aggravated by military service. However, the appeal was allowed on the ground that on the date of recruitment of the appellant, he was subjected to medical tests and found fit. The Medical Board who conducted such medical check up did not make note of any disability or disease whether related to disease of schizophrenia or otherwise. Presumption arises in favour of the appellant being fit on the date of his recruitment and disease subsequently being attributable to military service.***

Thereafter, ***Dharamvir Singh's case (supra) and Rajbir***

Singh's case (supra) have been followed by Hon'ble the Supreme Court in a

case of ***Ex Hav Mani Ram Bhaira vs. Union of India and others, passed in CA No. 4409-2011, decided on 11.02.2016.*** In this case, the appellant was discharged from service on account of his being case of Bilateral PVD (Lower Limb) with disability assessed at 30% for life. The disability pension was denied on the ground that disability suffered by the appellant was not attributable to military service. The appeal was allowed on the ground that where the Medical Board has not taken any note of any pre-existing disease or disability with the recruit, at the time of enrollment, there is a presumption that disability detected at the time of his discharge from service, was attributable to military service.

Similarly in a case of ***Ex GNR Laxmanram Poonia (Dead) through Lrs vs. Union of India and others, 2017 (2) S.C.T 53*** before Hon'ble the Supreme Court, the appeal was allowed and it was held that once a person is enrolled in Military Service without recording any disease or disability, it has to be presumed that he was in good health and any subsequent deterioration in his health, is deemed to be due to and attributable to military service. Opinion of Medical Board that disability was not due to military service without any scrutiny of his service record or other available evidence, would not disentitle him from disability pension. In para No. 22 and 23, it has been observed as under:-

22. In the present case, it is undisputed that the appellant was not suffering from any disease/disability at the time of entering into Military Service. It was on the respondent to show that the appellant was suffering from schizophrenia at the time of entering into service by producing any document viz. medical prescription etc. In the absence of any note in the service record in this regard at the time of joining the Military Service, the Medical Board should have called for the service records and looked into the same; but nothing is on record to suggest that any such record was called for by the Medical Board to arrive at the conclusion that the disability was not due to Military Service. The Medical Board simply stated that the disability is neither attributable to nor

aggravated by Military Service. The relevant portion reads as under:

“1. Though the disablement has been mentioned in percentage in para 6 of Part V, this does not mean eligibility for disability pension since the Disability/Disabilities is/are neither attributable to nor aggravated by service”

2. Opinion of assessment by the Board is recommendatory in nature and is subject to acceptance by Pension Sanctioning Authority.” In the absence of any evidence on record to show that the appellant was suffering from any such disease like schizophrenia at the time of entering into the Military Service, it will be presumed that the appellant was in a sound mental condition at the time of entering into the Military Service and the deterioration of health has taken place due to Military Service.

23. Based on the above discussion, we hold that the Tribunal did not examine the case at hand in the light of the Army Pension Regulations, 1961, the Entitlement Rules for Casualty Pensionary Awards, 1982 and General Rules of Guide to Medical Officers (Military Pensions) 2002 and, therefore, the impugned order cannot be sustained. Applying the principles of Dharamvir Singh’s case and Rajbir Singh’s case, it has to be presumed that the disability of the appellant bore a casual connection with the service conditions. The appellant was diagnosed to be suffering from medical disability at 60% for life on 09.09.2009 and he was discharged from service on 7.10.2009. After invalidation from the service, the appellant passed away on 01.06.2015. By order dated 13.02.2017 in I.A. No. 3/2016, the legal heirs have been ordered to be substituted. Hence wife of the appellant and other legal heirs shall be entitled to disability pension as per the Rules.

Thus, the consistent view taken by Hon'ble the Supreme in cases of disability pension of an Army person is that in the absence of any evidence on record to show that the person was suffering from any disease at the time of entering into Military service, it will be presumed that the appellant was in sound mental and physical condition at the time of entering into Military Service and the deterioration of Health has taken place due to Military Service. This view has been given by Hon'ble the Supreme Court by examining in detail Regulation 173 of Regulations 1961, Rule 5,9 and

423 of General Rules of Guide to Medical Officers (Military Pension) 2002.

The provision for payment of disability pension is a benefit 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 disconnection 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.

In the present case, the claim of the petitioner has been rejected only on the ground that disability of the petitioner is neither attributable to nor aggravated by military service. Further there is a delay of 10 years in approaching this Court.

However, the claim of the petitioner has been wrongly rejected, as held by Hon'ble the Supreme Court time and again in various judgments that where the Medical Board has not taken note of any pre-existing disease or disability with the recruit, at the time of enrollment, there is presumption that the disability detected at the time of his discharge from service was attributable to military service. In the present case, the petitioner has suffered "Wasted Leg Syndrome (RT) with disability of 30% for life. The said disease has been first time diagnosed after about 11 years of service with the respondents, in August 1999. There is no other material on record

suffered by the petitioner or any medical diagnosis etc.

With respect to the argument of learned counsel for the respondents that the petitioner has approached this Court after a gap of almost 10 years, reference at this stage can be made to a Division Bench judgment of this Court in a case of ***Kapoor Singh Sandhu vs. Union of India and others, 2008 (2) SCT 386*** wherein it was held that the claim of pension cannot be opposed on the ground of delay and laches. The petitioner in this case was enrolled in Army Ordnance Corps on July 28, 1965 as Rect./Clerk. He was invalidated from this service w.e.f 04.11.1966 with 100 per cent disability due to Pleural Effusion (Right Side). The writ petition was filed after 20 years of rejection of the appeal. The writ petition was allowed but the arrears of pension were restricted to three years and two months preceding the filing of the writ petition.

Applying the ratio of law laid down by Hon'ble the Supreme Court in various judgments mentioned above, we are of the view that the claim made by the petitioner for disability pension, has been wrongly rejected by the authorities, as at the time of entry into service, the petitioner was not suffering from any disease. Further the disability pension is a benefit provision which ought to be interpreted liberally. As per Rule 423 (a) of General Rules 2002 for the purpose of determining a question whether the cause of 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.

In view of the findings as recorded above, the impugned orders dated 06.03.2006 (P-3), 27.03.2008 (P-5) and 25.11.2010 (P-6) are set

aside. The petition is allowed. The petitioner is held entitled to be paid disability pension. However, arrears of pension shall be restricted to three years and two months preceding the filing of this writ petition.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

02.03.2021
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No