



W.P.No.28203 of 2022

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2023

DELIVERED ON : 23.02.2023
CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.28203 of 2022

1. E.Sigmn. K.Subbaraj (Deceased)

2.A.Banumathi

...Petitioners

P2 substituted as LR of the deceased P1 vide order dated 18.11.2022
made in WMP No.28985/2022.

Vs.

1.Union of India represented by the
Secretary, Ex-serviceman Welfare
Ministry of Defence (Army),
New Delhi - 110 011.

2.The Chief of Army Staff,
AHQ, South Block, IHQ of MoD,
Kashmir House, Rajaji Marg,
DHQ Post, New Delhi - 110 001.

3.Principal Controller of Defence Accounts
Draupathighat, Allahabad, U.P. 211 014.



W.P.No.28203 of 2022

WEB COPY

4.The Officer - in- Charge, (Records),
Records Signals, Jabalpur,
Pin- 908770, C/o. 56 APO.

5.The Managing Director,
Group Insurance Fund,
Rao Tula Ram Marg, Vasanth Vihar PO,
New Delhi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the Armed Forces Tribunal, Regional Bench, Chennai order impugned in OA.No.48 of 2021 dated 16.06.2022 as arbitrary, illegal, discriminatory and unconstitutional offending the Fundamental Rights of the applicant and consequentially direct the respondents 1 to 4 to grant disability element of disability pension duly broad banded @ 50% coupled with service element with effect from the date of discharge of the applicant (i.e. from 26.10.1982).

For Petitioner	: Lieutenant Colonel Mr.Ganesan.S
For RR1 to 4	: Mr.A.R.Sakthivel, SPCGSC
For R5	: Mr.K.Sanjay

ORDER

(R.HEMALATHA, J.)

Challenge is made in this Writ Petition to the order dated 16.06.2022 in O.A. No.48 of 2021 on the file of the Armed Forces Tribunal, Regional Bench, Chennai.



W.P.No.28203 of 2022

WEB COPY

2.The petitioner was enrolled in the Indian Army on 12.03.1975 and was invalided out of service on Low Medical Category (EEE) on 26.10.1982 due to the disability "Epilepsy" under Rule 13(3) Item III (iii) of Army Rules 1954 after rendering 7 years and 229 days of service. The Invaliding Medical Board found the petitioner to be suffering from Epilepsy, which disability was assessed at 20% for a period of 2 years. The opinion of the Board was that the disability was neither attributable to nor aggravated by Military Service and consequently the petitioner was discharged from Army Service on 26.10.1982. The claim of the petitioner for Disability Pension was rejected by the 4th respondent vide letter dated 03.05.1983. Subsequently after a long gap of 36 years, the petitioner submitted a representation to the 4th respondent dated 14.02.2019, for grant of Disability Pension and the same was also rejected by the 4th respondent vide orders dated 28.02.2019. Thereafter, the petitioner filed O.A. No.48 of 2021 before the Armed Forces Tribunal, Regional Bench, Chennai, to set aside the orders passed by the 4th respondent in Order No.P/13854835K/DP-



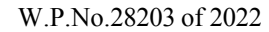
W.P.No.28203 of 2022

WEB COPY

6/NER dated 28.02.2019 and also for a direction to the respondents to grant Disability Pension with Broadbanding benefits and Service Element with effect from the date of discharge of the petitioner from service. The said application was dismissed by the Armed Forces Tribunal, Regional Bench, Chennai, vide its orders dated 16.06.2022 on the ground that Epilepsy falls outside the parameters laid down for being eligible for Disability Pension and there is no justification for the protracted delay of 13862 days in filing the Application in O.A. No.48/2021. Aggrieved over the same, the present Writ Petition is filed.

3.Heard, Lieutenant Colonel Mr.S.Ganesan, learned counsel appearing for the petitioner, Mr.A.R.Sakthivel, Senior Panel Central Government Standing Counsel, appearing for the respondents 1 to 4 and Mr. K. Sanjay, learned counsel appearing for the 5th respondent.

4.The learned counsel appearing for the petitioner, relied on the following decisions in



- and contended as follows:

- <https://www.mhc.tn.gov.in/judis>



W.P.No.28203 of 2022

WEB COPY

member of the Force is discharged on medical ground, his entitlement to claim Disability Pension would arise unless 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.

- iii. The provision for payment of disability Pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure.
- iv. If disability pension is denied on the ground that the disability was neither attributable to nor aggravated by the military service, it must be affirmatively proved by the employer and this burden of proof lies heavily on the employer.
- v. 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.
- vi. There ought to be atleast a casual and perceptible nexus between the two. Denial of Disability Pension would be approvable, only if



W.P.No.28203 of 2022

WEB COPY the disability by no means can be related to the Army Service.

vii.The claim of the Disability Pension cannot be opposed on the ground of delay and laches.

He further contended that in the decision in ***Kapoor Singh Sandhu vs. Union of India and others*** (cited supra), the petition was allowed by the Hon'ble Supreme Court but the arrears of pension was restricted to three years and two months preceding the filing of the Writ Petition.

5.Per contra Mr.A.R.Sakthivel, Senior Panel Central Government Standing Counsel, appearing for the respondents 1 to 4 contended that

- i. The petitioner was enrolled in the Indian Army (Corps of Signals) on 12.03.1975 and he was working as a Driver Grade-II in the Mechanical Transport Division.
- ii. The petitioner was found to be in low medical category EEE for the disability Epilepsy (345) and was invalided out from service on 26.10.1982 under Rule 13(3) Item III (iii) of Army Rules 1954. Thereafter, he was brought before a duly constituted Invaliding



W.P.No.28203 of 2022

WEB COPY

Medical Board (IMB), where he was physically and medically examined by the competent officers. They have given an opinion that the petitioner's disease was neither attributable to nor aggravated by military service and not connected with service and that the disability is constitutional in origin and is not connected with service condition.

- iii. The Medical Board has assessed the degree of disablement @ 20% for two years. The claim of disability pension made by the petitioner was forwarded to PCDA (Pension) Allahabad for adjudication, which in turn rejected the claim after consulting the Medical Advisor (Pensions) attached to their office vide letter No.G-3/83/852/V dated 14.03.1983 observing that "It has been decided that the disability which the individual suffered during his service in the Army and on which his claim is based (i) is not attributable to military service (ii) and has not also fulfilled the condition, namely, if that such a disability arose during the military service and had been aggravated thereby. Accordingly no disability pension is admissible under rules". The said adjudication was



W.P.No.28203 of 2022

WEB COPY

communicated to the petitioner vide Signals Records letters No.P/13854835/DP-4/NER dated 03.05.1983 with an advice to prefer an appeal against the decision not later than six months from 14.03.1983.

- iv. The petitioner did not file any appeal against the said decision till date and after a lapse of 36 years, he submitted a representation on 14.02.2019 to the 4th respondent for grant of disability pension, which was also rejected by the 4th respondent vide letter No.P/13854835K/DP-6/NER dated 28.02.2019.
- v. Thereafter, the petitioner filed O.A. No.48/2021 before the Armed Forces Tribunal, Regional Bench, Chennai.
- vi. The Tribunal had rightly held that the petitioner is not entitled to disability pension and therefore, there is no necessity for this Court to interfere with the findings of the Armed Forces Tribunal, Regional Bench, Chennai.

6. The learned counsel appearing for the respondents 1 to 4 also relied on the decision in *Ex CFN Narsingh Yadav vs. Union of*



W.P.No.28203 of 2022

WEB COPY

India & others reported in **CDJ 2019 SC 1135** and contended that 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 of enrolment by the member. He also contended that since the petitioner was posted as a driver neither the nature of job nor the place of posting was such that which could have caused stress and strain leading to disability that could be attributed to or aggravated by military service. He also relied on the decision in **Secretary, Ministry of Defence & Others vs. Damodaran A.V. (ded) through LRs & others** reported in **CDJ 2009 SC 1672** and contended that Medical Board's opinion to the effect that illness and disability suffered by the petitioner was not attributable to military service cannot be substituted by this Court in order to arrive at a contrary finding and that when the Medical Board ruled out that the disability of the individual is not attributed to or aggravated by military service, the petitioner cannot claim pensionary benefits. It is also contended by him that the petitioner did not file any appeal against the order of the Invaliding Medical Board within the time stipulated in the



W.P.No.28203 of 2022

WEB COPY

order and after a lapse of 36 years, he filed a representation before the 4th respondent and since the same was rejected by the 4th respondent, he filed the Original Application before the Armed Forces Tribunal, Regional Bench, Chennai, in O.A. No.48/2021 and therefore, he cannot also be given pensionary benefits on the ground of delay and laches.

7. The learned counsel for the respondents 1 to 4 further relied on the decision in *C. Jacob vs. Director of Geology & Mining & Another* reported in *CDJ 2008 SC 1754* and contended that the present case is a typical example of 'representation and relief' and that the petitioner having kept quiet for more than 36 years after he was boarded out from service, had approached this Court when no records with regard to his previous services would be available for the relief of pensionary benefits.

8. The point that arises for consideration in the instant petition is that whether the disability of the petitioner is attributable to or aggravated by Military service. It is an admitted fact that the petitioner



W.P.No.28203 of 2022

was posted as a transport driver in the Indian Army and nowhere it is stated that he was posted in a sensitive area or border area. It is not also the case of the petitioner that he was posted in an isolated location. A person is, under law, entitled to disability pension provided his disability is certified by the appropriate Medical Authority as being attributed to or aggravated by or connected with military service. In the instant case, the Invaliding Medical Board gave a definite finding that the disability suffered by the petitioner was neither attributable to nor aggravated by military service. Rule 173 of the Pension Regulations for the Army reads as under.

"173. Primary conditions for the grant of disability pension.--Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above.

The question whether a disability is attributable to or aggravated by military service shall be determined under rule in Appendix II.

Relevant portion in Appendix II reads as follows:

'2. Disablement or death shall be accepted as due to military service provided it is certified that--



W.P.No.28203 of 2022

WEB COPY

(a) The disablement is due to wound, injury or disease which--

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to or hastened by--

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note.--The rule also covers cases of death after discharge/invaliding from service.

3. There must be a causal connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case.' "

Regulation 423 deals with "Attributability to service". For the purpose of determining the same it is essential to establish whether the disability bore a casual connection with the service conditions. The question whether the disability is attributed to or aggravated by service or not



W.P.No.28203 of 2022

WEB COPY

should be decided as regards its medical aspects by a Medical Board or by the Medical Officer who would assign reasons for his opinion. The opinion of the Medical Board/Medical Officer insofar as it relates to the actual cause of the disability would be recorded as final. In the decision in ***Secretary, Ministry of Defence & Others vs. Damodaran A.V. (ded) through LRs & others*** (cited supra), it was held as follows:

"When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invaliding medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a casual connection with military service or not. On the basis of the



W.P.No.28203 of 2022

WEB COPY

same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invaliding Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or filed area and of course, the physical examination of the individual.

9. Moreover, it is seen from Rule 173 of the Pension Regulations for the Army that disability pension would be computed only when the disability occurred due to a disease which can be attributable to



W.P.No.28203 of 2022

WEB COPY

military service or existed before or arose during military service and has been aggravated during military service. If these conditions are satisfied, necessarily the petitioner would be entitled to disability pension. In the instant case, the Medical Board had already arrived at a conclusion that the disease of the petitioner "Epilepsy" was not attributable to or aggravated by military service and the opinion of the Medical Board has not been assailed by the present petitioner either by way of filing an appeal as per the orders of the Invaliding Medical Board during the year 1982 or in the Original Application in O.A. No.48/2021. Even in the present Writ Petition, the opinion of the Medical Board has not been challenged but on the other hand, the challenge is made against the denial of the pensionary benefits claimed by the petitioner. On top of it, the petitioner had approached the Armed Forces Tribunal after a lapse of 36 years after giving a representation to the 4th respondent. The 4th respondent has also rejected the claim of the petitioner after consulting a Medical Officer attached to its office.



W.P.No.28203 of 2022

WEB COPY

10. The decisions relied upon by the learned counsel for the petitioner would not apply to the present case for the following reasons:

10.1. In ***Dharamvir Singh vs. Union of India & others*** (cited supra), the appellant was a sepoy in the Corps of Signals of the Indian Army and he was boarded out of service after 9 years of service when he was suffering from schizophrenia. Since no note was given at the time of enrolment of the person, the disease was presumed to be attributed to or aggravated by military service. In the instant case, the Medical Board held that the disability "Epilepsy" suffered by the petitioner was constitutional disorder. A guide to Medical Officers (Military Pensions), 2002 "Entitlement: General Principles" has mentioned the following diseases, which would ordinarily escape detection at the time of enrolment.

“(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.



W.P.No.28203 of 2022

WEB COPY

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.”

The amended clause of Rule 14 reads as follows:

"Rule 14 (a)- For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

(i) That the disease has arisen during the period of military service, and

(ii) That the disease has been caused by the conditions of employment in military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(c) Cases in which it is established that conditions of military service did not determine or contribute to the



W.P.No.28203 of 2022

WEB COPY

onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services."

10.2. In the decision in ***Chaman Lal vs. Union of India and Others*** (cited supra) it was held that the opinion of Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such reports 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. In the instant case, the Invaliding Medical Board has categorically held that the present petitioner is not fit for service and therefore, he was boarded out and there is absolutely no record to doubt the correctness of the report of the Invaliding Medical Board. Moreover, as already observed, the petitioner



W.P.No.28203 of 2022

had not challenged the opinion of the Invaliding Medical Board before any forum.

10.3. In the decision in *Union of India & others vs. Manjeet Singh* (cited supra), the respondent joined the Army service and was given rigorous training in JAK Rifles. In such circumstances though the condition of the respondent was diagnosed as constitutional disorder, it was held that it has to be presumed that the disability had been contracted by him during his tenure in the Armed service unless the same is disproved by cogent, coherent and persuasive reasons recorded by the Medical Board.

11. The specific contention of the respondents is that there was a mass recruitment during 1975 and a casual medical examination was conducted on each and every individual person and the "Epilepsy" could not be found out as the petitioner did not inform the same about this to the concerned authority and epilepsy could not also be detected as there would be intervals of normality. It is to be pointed out that the petitioner



W.P.No.28203 of 2022

WEB COPY

had not challenged the opinion of the Medical Board till date and had also approached this Court after a lapse of 36 years seeking pensionary benefits from the year 1982 during which he was boarded out of Indian Army.

12. For the reasons stated above, we do not find any merit in the present Writ Petition. The order of the fourth respondent dated 28.09.2019 is valid and legal. In view of the same, the order of the Armed Forces Tribunal, Regional Bench, Chennai, dated 16.06.2022 in OA.No.48 of 2021 is upheld.

13. Accordingly, W.P.No.28203/2022 is dismissed. No costs.

(V.M.V.,J.) (R.H.,J.)
23.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



WEB COPY



W.P.No.28203 of 2022

To

- 1.Union of India represented by the
Secretary, Ex-serviceman Welfare
Ministry of Defence (Army),
New Delhi - 110 011.
- 2.The Chief of Army Staff,
AHQ, South Block, IHQ of MoD,
Kashmir House, Rajaji Marg,
DHQ Post, New Delhi - 110 001.
- 3.Principal Controller of Defence Accounts
Draupathighat, Allahabad, U.P. 211 014.
- 4.The Officer - in- Charge, (Records),
Records Signals, Jabalpur,
Pin- 908770, C/o. 56 APO.
- 5.The Managing Director,
Group Insurance Fund,
Rao Tula Ram Marg, Vasanth Vihar PO,
New Delhi.



WEB COPY



W.P.No.28203 of 2022

V.M.VELUMANI, J.
and
R. HEMALATHA, J.
bga

Pre-delivery order in
W.P.No.28203 of 2022

23.02.2023