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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 11.07.2023

+ **W.P.(C) 718/2023**

UMRAO RAWAT

..... Petitioner

versus

UNION OF INDIA AND ANR

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Abhishek Kumar Choudhary, Advocate

For the Respondents: Ms. Nidhi Banga, Senior Panel Counsel with Ms. Avshreya Pratap Singh Rudy and Mr. Nishant Kumar, Advocates

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to the respondents to re-appoint the petitioner with full seniority, promotion & back wages. Alternatively, petitioner seeks grant of invalid pension or any other pension to rehabilitate the petitioner.

2. Petitioner was appointed as Constable (GD) on 26.04.2010. Petitioner has been boarded out vide letter dated 18.08.2017 on the ground that he was suffering from 'Paranoid Schizophrenia with



secondary depression with 80% disability'. Petitioner was categorized as Shape-5 (P) and declared unfit for service as a combatant in Armed Forces.

3. Learned counsel for the petitioner submits that petitioner had suffered the ailment on account of an incident that petitioner has witnessed and the illness is attributable to military services and as such the petitioner is entitled to disability pension.

4. Learned counsel for the petitioner relies on the decision of the coordinate bench of this Court dated 15.07.2022 in W.P. (C) No. 3884/2010 titled '*Roshan Lal Vs. UOI & Ors.*'. Learned counsel further relies on the decision of the Supreme Court in *Dharamvir Singh Vs. Union of India* (2013) 7 SCC 316; to contend that the pension provisions have to be liberally construed in favour of the officer who is boarded out on medical grounds.

5. Learned counsel for the respondents contends that petitioner has only rendered 7 years 5 months and 25 days of service and as thus is not entitled to pensionary benefits. She submits that in terms of Rule 38 of the CCS Pension Rules, 1972, since petitioner has rendered less than 10 years of service, he is dis-entitled to grant of any pension. Learned counsel further submits that petitioner falls in category 'C' of Standing Order 4 of 2011 and has been declared 'unfit' on the ground of psychiatric disease and as such cannot be continued in service or re-appointed and the termination of the petitioner was justified.



6. We find merit in the contention of the learned counsel for the respondents in so far as the boarding out of the petitioner is concerned on the medical ground. The petitioner being category 'C' and found to be suffering from a psychiatric disease has been boarded out in term of Standing Order 4 of 2011. To that extent, the action of the respondent cannot be faulted and petitioner cannot be directed to be reinstated in service.

7. Coming to the question of grant of invalidation pension, the Supreme Court in **Dharamvir Singh (Supra)** has held as under:-

"32. Para 1 of Chapter II - "Entitlement:

General Principles" specifically stipulates that certificate of a constituted medical authority vis-a-vis invalidating disability, or death forms the basis of compensation payable by the Government the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre- and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.

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 “generalized 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.

34. As per Rule 423(a) of the General Rules for the purpose of determining a question 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. “Classification of diseases” have been prescribed at Chapter IV of Annexure I; under Para 4 post-traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing, etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.”

8. The Supreme Court in ***Dharamvir Singh (Supra)*** has held that the Medical Board is required to examine the cases in light of etiology of the particular disease and after consideration of all relevant particulars of a case required to record its conclusion with reasons in support in clear terms and language which the Pension Sanctioning



Authority would be able to appreciate. The Medical Board has to give reasons in support of its opinion particularly when there is no note of such disease or disability available in the service record of the individual at the time of acceptance for military service. In the absence of any evidence on record to show that the individual was suffering from the specified ailment at the time of acceptance of his service, it would be presumed that the individual 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.

9. In the instant case, the record of the Medical Invalidation Board has been produced. Reference may be had to the history of the ailment as recorded by the Board. The Board has recorded as under:

“Belongs to Jaipur District of Rajasthan, 2nd rank in the family of 4 sons; studied upto 12th standard; Enlisted in CRPF in 2010 at Ajmer; under went basic training at RTC Neemuch; Married in 2011; Arranged marriage; wife illiterate; House wife; Having one son; H/o Tobacco chewing; Not an alcoholic; Not a smoker; To start with the individual when going on OPS duty at Chattisgarh in 2015, witnessed IED blast, where one young girl was burnt alive during the blast. After seeing that, he become mentally upset; During 13/09/2016, when individual was going on leave, he become unconscious near New Delhi Railway station and was taken to CH, New Delhi where he was admitted w.e.f. 14/09/2016 to 10/10/2016. Diagnosed as Paranoid Schizophrenia and treated with anti-psychotics. He had the symptoms of suspicious about other, that they are trying to kill him, negative thinking, does not want to go home or duty and hearing of voices. H/o absconding from home once and from cH New Delhi once. He was referred to psychiatry OPD RML Hospital



New Delhi New Delhi on 23/09/2016 and 26/09/2016 with the H/o suicidal tendency, sleep disturbance. Now on regular antipsychotic medication Olanzapine 5 mg, Aripiprazole 15 mg, Escitalopram 10 mg OD, Mirnite 15 mg HS, Propranolol 40 mg OD, Pacitane 2 mg, Lonazep 0.5 mg BD. C/O occasional hearing of voices, feeling of smell of burnt meat.”

(underlining supplied)

10. The Medical Board has noticed that the petitioner witnessed an IED blast where one year girl was burnt alive during the blast and after seeing that he became mentally upset. The petitioner has been diagnosed as Paranoid Schizophrenia. The Board has also recorded that the petitioner is a case of occasional hearing of voices, feeling of smell of burnt meat which all goes to indicate that the ailment suffered by the petitioner is on account of witnessing the IED blast where one year young girl was burnt alive during the blast. The Medical Board has also opined that the percentage of the disability of the petitioner is 80% (severe disability) and has been declared unfit for service as a combatant in Armed Forces.

11. The Medical Board proceedings clearly show that the ailment suffered by the petitioner is attributable to military service. Further, there is no record of petitioner suffering from such ailment at the time when he was admitted in the Force.

12. We are of the opinion that the ailment suffered by the petitioner is clearly attributable to military service.

13. Coming to the contention of learned counsel for the respondent



that petitioner has not put in qualifying tenure of service of 10 years as required under the CCS Pension Rules, reference may be had to the Office Memorandum dated 12.02.2019 wherein the Rule 38 and Rule 49 of the CCS Pension Rules, 1972 have been amended to the effect that a Government Servant who retire from service on account of any bodily or mental infirmity, which permanently incapacitates him from service before completing the qualifying service of ten years, may also be granted invalid pension in accordance of sub-rule 2 of Rule 49 subject to certain conditions, inter-alia, that the Government Servant was examined by the appropriate Medical Authority either before his appointment or after his appointment and declared fit.

14. It is not in dispute that petitioner was examined by the appropriate medical authorities at the time of his appointment and was found medically fit.

15. As noticed herein above, petitioner has been boarded out on account of an illness suffered during his service and which is found to be attributable to military service. Clearly, the said Office Memorandum would be applicable to the petitioner and petitioner would be entitled to grant of invalid pension in accordance with the said Office Memorandum dated 10.02.2019.

16. With regard to the contentions of learned counsel for the respondents that OM would be prospective and have no retrospective application as petitioner was invalidated prior to the notification of the Office Memorandum, reference may be had to the decision of the



coordinate bench upon ***Roshan Lal (Supra)***, wherein the coordinate bench was considering the case of an officer who was invalidated in the year 1993. The coordinate bench also relied in the judgment of the Supreme Court in ***Dharamvir Singh (Supra)***.

17. Even otherwise, the law with regard to grant of invalid pension has to be liberally construed as laid down by the Supreme Court and applying the same principle, we are of the view that petitioner has suffered an illness while in service and has been boarded out on account of the said illness which is attributable to military service and has been found unfit for military service, petitioner is entitled to invalid pension in accordance with the said OM.

18. The petition is accordingly allowed. Respondents are directed to release invalid pension to the petitioner with effect from the date, petitioner was boarded out from service i.e. 26.10.2017 with interest @ 6% p.a. till payment is made.

19. The petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 11, 2023

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