



Neutral Citation Number 2023:DHC:5924-DB

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

% Judgment delivered on: 11th August, 2023

+ **W.P.(C) 10628/2023**

EX RECT KESHAV DUTT OLI Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Nandal, Advocate.

For the Respondent: Mr. Anurag Ahluwalia, CGSC for
UOI with Ms. Archana Surve, GP,
Ms. Kholi Rakuzhuro, Advocate.
Major Partho Katyayan.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.41243/2023 (exemption)

Exemption allowed subject to all just exceptions.

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1. Issue notice. Notice is accepted by learned counsel appearing for the respondents.
2. With the consent of parties, petition is taken up for final disposal today itself.
3. Petitioner impugns order dated 22.09.2022 where the original



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application filed by the petitioner before the Armed Forces Tribunal (hereinafter referred to as 'the Tribunal') has been dismissed. Petitioner also impugns order dated 07.02.2023 whereby the review application filed by petitioner has been dismissed.

4. Petitioner was recruited in the Army in trade of Unit Cook on 05.08.1989 in Army Ordinance Corps. Petitioner was physically examined at the time of recruitment and was declared fit in SHAPE AYE and he was thereafter allowed to join his training.

5. During training, petitioner was medically examined and was declared to be suffering from mental retardation. Petitioner was recruited on 05.08.1989 and his ailment was discovered in December 1989 itself when he was undergoing training. The Invalidation Medical Board was held on 21.05.1990 and he was invalidated on 06.06.1990.

6. Learned counsel for the petitioner submits that petitioner was fit, hale and hearty when he was enlisted and developed illness on account of stress caused by the excess hours of working i.e. from 4 am till 11 in the night on daily basis.

7. Petitioner filed Original Application before the Tribunal in the year 2017 which was dismissed by the impugned order dated 22.09.2022. Thereafter petitioner filed a petition before this Court being WP(C) 41/2023 impugning order dated 22.09.2022 which was disposed of on 04.01.2023 permitting the petitioner to file a review petition before the Tribunal which review petition was dismissed by



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the impugned order dated 07.02.2023.

8. We notice that petitioner was invalidated on 06.06.1990 and approached the Tribunal in the year 2017 after a delay of over 27 years. Tribunal in the impugned order dated 22.09.2022, while holding that the petition filed by the petitioner before the Tribunal was grossly delayed having been filed after a period of 25 years considered the case on merits also. The Tribunal noticed that since the mental disability came to light in less than 5 months of recruitment training, the Medical Board held assessed the mental retardation at 30% for 5 years and opined that the disability was neither attributable to nor aggravated by military service. The claim of petitioner for grant of disability pension was rejected on the ground that the illness was a constitutional disease and neither attributable to nor aggravated by military service.

9. The Tribunal also noticed that the pension was not sanctioned, the medical records had been destroyed and limited records were available.

10. The Tribunal has referred to the opinion given by the Senior Advisor (Psychiatry) of Command Hospital, Air Force, Bangalore on 23.03.1990 qua the petitioner which reads as under:-

"This young recruit came under psychiatric evaluation because of certain oddity of his behaviour noted during his training. His performance was very poor, unable to comprehend simple instructions and had to be helped to keep himself clean and hygienic. Psychiatric



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evaluation has confirmed subnormality of intelligence (IQ below 70) with associated disturbance of adaptive behaviour. Relevant investigations including CT scan revealed no evidence of any intracranial pathology. A case of Mental Retardation (Primary) and is uneducable. With this level of subnormal intellectual potential, the recruit is not trainable and will not be able to perform his duties. Recommend to be invalided out of service in Cat. EEE."

11. The Senior Advisor (Psychiatry) had opined that petitioner was brought for evaluation on account of oddity of his behaviour noted during training, his poor performance, inability to comprehend simple instructions and needed help to be kept clean and hygienic. His psychiatric evaluation confirmed subnormality of intelligence (IQ below 70) with associated disturbances of adaptive behaviour.

12. Reference was drawn by the Tribunal to para 5 and 6 of the Entitlements Rules for Casualty Pensionary Awards, 1982 to Armed Forces Personnel 2008 which stipulates that connection between the military service and the disability has to be established by the appropriate authorities and the mere fact that a disease had manifested during military service would not *per se* establish attributability to or aggravation by military service.

13. The Tribunal has noticed that in the instant case the illness was noticed within 5 months of the petitioner being sent for training.

14. The Tribunal has held that the Invalidation Disease, i.e, Mental Retardation fell outside the purview of attributability to military service.



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15. We find no error in the findings returned by the Tribunal, particularly, since the medical experts had opined that the invalidating disease was neither attributable nor aggravated by the military service. Furthermore, the disease was noticed within 5 months of petitioner commencing his training for recruitment. It is not a case where petitioner was subjected to a lot of stress or strain during his service but it is a case where within the initial months of his training, the disease was detected.

16. Reference may be had to the judgment of the Supreme Court in *Narsingh Yadav vs. Union of India.*: (2019) 9 SCC 667, wherein the Supreme Court has held that there cannot be a mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributable to or aggravated by military service. Each case has to be examined to ascertain as to whether the duties assigned to the individual could have led to stress and strain leading to psychosis and psychoneurosis. The Supreme Court has in *Narsingh Yadav* (supra) also held that relapsing forms of mental disorders which have intervals of normality and epilepsy are undetectable diseases while carrying out physical examination on enrolment.

17. Petitioner, in the instant case, was detected with having a mental disability within 5 months of his initial training.



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18. Clearly in the instant case, at the time of initial medical examination for enrolment, the disability from which the petitioner suffered could not be detected.

19. The contention of learned counsel for the petitioner that petitioner was subjected to long hours of work, in our view, would not lead to the nature of disability that petitioner was found to be suffering from at the time of his examination by the Invalidation Board, i.e., mental retardation. Long hours of work may cause sleep deprivation or anxiety but would not cause mental retardation of an individual.

20. Furthermore, we find that there is no material to contradict the opinion rendered by the Specialist comprising the Invalidating Medical Board. We also find that there is no material to contradict the findings returned by the Medical Board that the illness is neither attributable nor aggravated by the military service.

21. On that ground, we find no infirmity in the view taken by the Tribunal in holding that even on merits, petitioner is not entitled to any review.

22. In view of the above, we find no merit in the petition. Petition is consequently dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

AUGUST 11, 2023/st