



W.P.No.15256 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.03.2024
Pronounced on	03.04.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.15256 of 2021

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Vs.

Petitioner

1. Union of India,
rep.by its Secretary to Government,
Ministry of Defence,
Department of Pension & AC
New Delhi.
2. Chief Controller Defence
Accounts (Pensions),
G-3/IX Section, Draupathi Ghat,
Allahabad-211 014,
State of Uttar Pradesh.
3. The Commanding Officer/Officer-in-Charge,
Signals Abhilekh Karyalaya,
SIGNALS Records,
Department of Defence (Army),
Post Bag: No:5 Jabalpur-482001.
4. Commanding Officer
Office of Officer Commanding 2
Technical Training Regiment,



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Department of Defence (Army),
Jabalpur.

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5. The Assistant Controller of Defence
Accounts, Zonal Office,
No.506, Anna Salai,
Chennai-600 018.

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Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a WRIT OF MANDAMUS or any other appropriate Writ, order or direction in the nature of Writ, directing the Respondent herein to consider and pass orders on the representation made by the petitioner dated 29.03.2021 to provide disability pension that been rejected as Neither attributed nor aggravated due to Military Service' that is in violation of respondent's implementation order vide F.No:4(17)2015/D(Pn/Legal) Ministry of Defence, Department of Ex-Servicemen Welfare D(Pension/Legal) dated 29.06.2017 in complying with Apex Court direction and to release the pending pension dues to the petitioner retrospectively from the date of joining on 31.07.1979 to till date.

For Petitioner	: Mr.J.Arokhiaraj
For Respondents	: Mr.P.G.Santhoshkumar

ORDER

Heard Mr.J.Arokhiaraj, learned Counsel for the petitioner and Mr.P.G.Santhoshkumar, learned counsel for the respondents and perused the materials available on records.



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2. A Writ of Mandamus has been filed by the petitioner to direct the respondents to consider and pass orders on the representation made by the petitioner dated 29.03.2021 to provide disability pension that has been rejected as neither attributed nor aggravated due to Military Service, which is in violation of the first respondent's implementation order vide F.No:4(17)2015/D(Pn/Legal) Ministry of Defence, Department of Ex-Servicemen Welfare D(Pension/Legal) dated 29.06.2017 in compliance with Apex Court direction and to release the pending pension dues to the petitioner retrospectively from the date of joining on 31.07.1979 to till date.

3. The petitioner joined the 4th respondent service and completed six years of mandatory training. During a parade, he was hit by his Ustad / Instructor with a strong lathi and suffered a bleeding head injury. He was treated in the 4th respondent's hospital and thereafter, he was discharged. The petitioner's mother was sick, hence, he took leave and went to his home in Bangalore. During that time, he developed seizures and was immediately admitted in the Air Force's hospital in Bangalore,



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where he was treated as an inpatient from 25.03.1980 to 10.05.1980. The above condition was consequent to the head injury suffered due to the earlier occurrence. Once again, the petitioner developed seizures and he was again admitted at the Military Hospital at Jabalpur from 16.05.1980 to 17.07.1980.

4. After undergoing treatment, the petitioner was medically discharged from service on 02.09.1980 under Army Rule 13(3) item IV for being invalid to serve and boarded out of service under the Medical Category EEE as permanent disability in conjunction with Sub Rule 13(24) and was placed in the permanent low medical category on account of FITS NYD.

5. The petitioner claims that he developed seizures only due to injury caused to him in service and his medical condition is attributable to his service. The petitioner applied for a disability pension and the same was rejected by the 2nd respondent on 04.06.1981 stating that the claim of the petitioner was not attributable to the service and it does not fulfill



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the conditions that had arisen during military service or existed before but aggravated due to military service. The petitioner filed an appeal on 02.03.2007. After getting an order for condoning the delay, his appeal was also rejected on 27.03.2009 and thereafter, the petitioner has sent a representation to the Defense Ministers Appellate Committee of Pension [MoD] and that was also rejected.

6. The petitioner has been raising the same representation through the Centralised Public Grievance Redress And Monitoring System (CPGRAMS) in the department of Administrative Reforms and Public Grievance, under the Ministry of Personal Grievances, Government of India. But the petitioner has been given with the same reply that he is not eligible to get a disability pension. The petitioner filed a complaint on 20.06.2018 seeking his medical records pertaining to his medical treatment in the 5th respondent regime and the medical records in the Air Force Hospital, Bangalore. But the 3rd respondent replied that there is no medical records available.

7. The submission of Mr.P.G.Santhoshkumar, learned counsel for



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the respondents stated that the petitioner's disability is neither attributable nor aggravated by service. The petitioner was brought before a duly constituted Invalidating Medical Board (IMB) held on 16.07.1980 at the Military Hospital, Jabalpur. He was examined and the Board had given an opinion that the petitioner's medical condition is a constitutional disorder and not connected to his service. The petitioner preferred his first appeal after a lapse of 26 years of service against the rejection of his disability pension claim.

8. This writ petition has been filed after a lapse of 40 years after he was boarded out due to invalidation out of service. General/routine check-up was carried out at the time of his recruitment and it was not possible at that point in time to detect the constitutional disorder of the petitioner. Further, there is no provision to carry out internal medical examinations at the time of recruitment, which may manifest later. He was brought before a duly constituted Invalidation Medical Board held on 16.08.1980 at a military hospital in Jabalpur, wherein he was medically and physically examined and his disability was opined as *'neither attributable to nor aggravated by service and constitutional disorder*



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not connected with service'.

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9. The petitioner's only claim from the year 1980 is that he had a medical condition of FITS as a consequence of his alleged injury suffered during a parade. It is claimed by the petitioner that he was hit by one Ustad by a strong lathi and he was suffered an injury over his head and that he was treated and joined service after he felt better. According to him, all these happened during the years 1979–1980. Subsequently, the petitioner developed FITS and it is claimed by the petitioner that it is attributable to an earlier injury suffered by him due to the attack made on his head. However, it was not accepted by the respondents. The Invalidation Medical Board held on 16.07.1980 also gave an opinion that *'neither attributable to nor aggravated by service and constitutional disorder not connected with service'*. However, the Medical Board had assessed the degree of disablement at 20% for two years with a composite assessment at 20% (Photocopy of AFMSF-16 dated 16 July 1980).

10. The petitioner's disability pension claim has been forwarded to



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the PCDA (Pension) Allahabad for adjudication. But they have also rejected it stating that in order to become eligible to get a disability pension, the disability ought to have been attributable to military service, but it does not fulfill the conditions. It is submitted by the respondents that even if the disability had arisen during military service or it existed before it should have got aggravated due to military service.

11. The petitioner did not claim that he had been posted during his service in any sensitive area. In fact, the petitioner's service was very short and he was boarded out on 02.09.1980. Even after the petitioner's claim for disability pension was rejected on 04.06.1981 the petitioner was kept quite by *acquiring* to the rejection order. After 16 years, he filed an appeal. The appeal got admitted after condoning the delay, but it was rejected on merit consequently. Thereafter, the petitioner made several representations. Even now, the petitioner has not produced the medical records to substantiate his claim.

12. The petitioner has stated that his request to get the past medical records made in the year 2018 was failure because he got a reply from the



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concerned authority that such medical records are not available. Certain alleged medical treatments that were taken during the period between 1980-1981 may not be available after nearly 35 years. In order to come under the purview of the disability pension entitlement, the two conditions should be fulfilled, and the said conditions are prescribed under Rule 173 of the Army Pension Act 1961 (Part I). The above rule prescribes as follows:

“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 at 20% or over.”

13. No medical records are available before the court except the medical record produced by the respondents, wherein it is recorded that the disability existed prior to enrolment and was conceived during the medical examination. Even the respondents stated that the medical condition at the time of joining would be a general / routine medical



checkup, and there is no provision to carry out an internal medical examination at the time of recruitment. The opinion of the board is also produced by the respondent before the court, which would only state that it was due to a constitutional disorder not connected with service.

14. The Hon'ble Supreme Court has held in the case of ***Dharamvir Singh Vs. Union of India and Ors*** reported in ***(2013) 7 SCC 316*** that certain conditions would escape from deduction at the time of enrollment are as under:

“(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.

(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



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intervals of normality.

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

15. In the subsequent judgement of the Hon'ble Supreme Court held in **Civil Appeal NO.7672 of 2019 [NO.14666828M EX CFN Narsingh Yadav Vs. Union of India & Ors]** reported in **2019 INSC 1121**. The Hon'ble Supreme Court has held that any disorder not mentioned at the time of enrollment is presumed to be attributable or aggravated by military service. In the said case, it is held as under:

"15) We find that it is not 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. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

16) Annexure I to Chapter IV of the Guide to Medical Officers (Military Pensions), 2002 "Entitlement: General Principles" points out that certain diseases which may be undetectable by physical examination on enrolment including the Mental Disorders;



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Epilepsy and Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder. therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.

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



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undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member."

16. It is further held that the opinion of the medical board is subject to judicial review, but the Courts are not possessed of required expertise to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. Despite the petitioner had the knowledge that he was boarded out due to the opinion given by the medical board as early as 1980, he did not choose to challenge the same by claiming a constitution of the review medical board. After having failed to do so, the petitioner had chosen to make efforts after 35 years by making a representation to the Centralized Public Grievance Redress and Monitoring System (CRGRAMS) to get his medical records of his past treatments taken in the year 1980. There is no remote possibility to get the medical records. It could have been possible if the petitioner had called for those medical records at the time when he was boarded out and made a claim for the constitution of the review medical board.



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17. Having failed to do so, the petitioner has been making representations before the authorities concerned, and his claim has been rejected several times for the same reason. Without any substantive proof or material, this court cannot go against the opinion of the medical board which stated that the disability of the petitioner is relateable to his constitution and not to his service. So it is too late in the day to make such a claim that the petitioner has developed a disability due to any conditions of his service or that the disability itself has been caused during the course of his service. There is nothing on record to presume that the petitioner's disability was caused due to his service or aggravated to his service and act upon. Hence, the claim of the petitioner cannot be considered favourably.

In the result, this Writ Petition stands **dismissed**. No costs.

03.04.2024

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking
Neutral Citation : Yes/No

jrs



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To
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Ministry of Defence,
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2. Chief Controller Defence
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R.N.MANJULA, J.

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