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W.P.No.27217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.12.2023
Delivered on : 28.03.2024

CORAM
THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

WP.No.27217 of 2023

Ex-Gnr C.Puratchidasan

..Petitioner

Vs

1.The Armed Forces Tribunal

Regional Bench

Old MH Building, 1A, Rudra Road

St.Thomas Mount, Chennai-600 016

2.Union of India

Rep. By its Secretary

Ministry of Defence

D.H.Q.PO, South Block, New Delhi-110 011

3.The Chief of Army Staff

Army Head quarters,

Integrated Head quarters

DHQ Post, Janth Block

New Delhi-110 011



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4.The PDCA (P)

Draupadhighat, Allahabad
Uttar Pradesh-211 014

5.The Officer-in-Charge, Records

Army Air Defence Records

Pin-908 803

C/O 56 APO (Jabalpur)

..Respondents.

PRAYER: Writ petition filed under Article 226 of Constitution of India, praying for writ of writ of certiorarified Mandamus calling for the entire records connected with the impugned order passed by the 1st respondent in O.A.No.176 of 2021 dated 01.12.2023 and quash the same and consequently direct the respondents to sanction the petitioner's disability pension to the petitioner w.e.f.14.11.1998 and disburse the arrears.

For petitioner : Mr.S.N.Ravichandran

Assisted by Mr.R.D.Ashok Kumar

For respondents : Mr.Venkatasamy Babu, Senior Panel counsel

for R2 to R5

R1-No appearance.

ORDER

Per J.NISHA BANU, J.

This writ petition has been filed for the issuance of writ of certiorarified Mandamus calling for the entire records connected with the impugned order



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passed by the 1st respondent in O.A.No.176 of 2021 dated 01.12.2023 and quash the same and consequently direct the respondents to sanction the petitioner's disability pension to the petitioner w.e.f.14.11.1998 and disburse the arrears.

2. It is averred in the writ petition that the petitioner was enrolled in the Indian Army on 26.06.1991 and was reported to Artillery centre, Nasik Road camp for requisite Military Training. The petitioner rendered blemishless record of service. The petitioner was posted to a different Regiment. On 03.10.1996, the petitioner was admitted as "CVS (INV) NAD" in 174 Military Hospital. Then again admitted on 25.02.1997 for "SCHIZOPHRENIA (CATATONICS)" and was discharged on 09.04.1997. Again diagnosed for "SCHIZOPHRENIZ (CATATONICS)" for a period of six months from 25.07.1997 and was in the same category till 25.07.1998.

3. The petitioner was again admitted in the Military Hospital on 17.07.1998 as a case on "ABONORMAL BEHAVIOUR" and was transferred to Command Hospital Air Force, Bangalore on 23.07.1998. The petitioner further averred in the writ petition that he has been assessed at 60% disability for 5 years. Since he was recommended by medical specialist as unfit to be in



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service on diagnosis of Schizophrenia [catatonics], he was invalidated out from service in Low Medical Category 'EEE [Psy]Permanent' and subsequently was sent before an invalidment medical board [IMB] at Command hospital Air Force, Bangalore, on 23.10.1998 to assess the cause, nature and degree of disablement. The invaliding medical board proceedings was approved and the petitioner was invalidated out from service with service from 14.11.1998 under Army Rule 13 [3] after rendering a service for a period of 7 years and 141 days.

4. According to the petitioner, the petitioner's illness of Catatonic Schizophrenia, suffered by him is attributable and aggravated by military service. Therefore, the petitioner preferred a Disability pension claim before the Pension Sanctioning Authority before the 3rd and 4th respondent on 05.03.1999. The said claim was rejected by the 3rd respondent on 27.07.1999. The petitioner sent a legal notice dated 25.09.1999 to the 5th respondent seeking for disability pension against the order of rejection passed by the 3rd respondent. However, the 5th respondent, by proceedings dated 07.01.2000, opined that the petitioner's disability was neither attributable nor aggravated by military service.



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5. The petitioner again submitted an application seeking for disability pension to the 2nd respondent and the same was forwarded to the 5th respondent. The 5th respondent rejected the said claim on 14.02.2008. Yet another application to 2nd respondent was again rejected by 5th respondent on 15.04.2009. Thereafter, the petitioner preferred various representations to the respondent on 13.11.2009 and 18.06.2015 to the Defence Pension Adalat, Tiruchirapalli, and Assistant Director of ex-Servicemen's Welfare, Pudukottai, for grant of disability pension and the same was forwarded to the 5th respondent. However, the same was rejected by the 5th respondent.

6. The petitioner filed an application dated 08.02.2017 under Right to information Act, 2005 requesting to furnish Medical Board Proceedings. The 5th respondent furnished the same. The petitioner made an application dated 23.06.2017 for grant of disability pension and the same was again rejected by the 5th respondent vide letter dated 08.08.2017.

7. The petitioner aggrieved by the above rejection order, filed appeal on 16.09.2017. The said Appeal was rejected by the respondents on 30.10.2017.



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The petitioner preferred second appeal on 23.11.2017 and the same has also been rejected.

8. The petitioner filed Original Application on the file of the 1st Respondent Tribunal in O.A.No.232 of 2018 praying to set aside the impugned order dated 30.10.2017 and to grant disability pension with effect from 14.11.1998. The Tribunal disposed of the case vide order dated 18.02.2020, directing the respondents to hold Re-survey Medical Board and further directed to grant disability element of disability pension, if entitled.

9. The petitioner was brought before the Re-assessment Medical Board at Military Hospital, Chennai on 07.12.2020 and was examined by the Board. However, the 5th respondent vide letter dated 29.04.2021, rejected petitioner's claim of disability pension on the ground that the disability 'CATATONIC SCHIZOPHERNIA' is neither attributable to nor aggravated by military service. The Re-assessment Medical Board proceedings was not furnished to the petitioner. Hence petitioner sought the Medical Board Proceedings under Right to Information Act, 2005 on 01.05.2021.

10. The petitioner again filed Original Application No.176 of 2021 before the 1st respondent challenging the rejection order passed by the 5th



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respondent dated 29.04.2021. The 1st respondent vide Order dated 01.02.2023 dismissed the application and rejected the petitioner's claim for disability pension on the ground that 'CATATONIC SCHIZOPHERNIA' falls outside the purview of attributability of military service.

11. The 1st respondent placed reliance on 'Guide to Medical Officers (Military Pension) 2002'' to hold that the attributability can be made only when if the disorder occurs when the individual is serving in (i) Combat area including counter in surgency operational area, (ii) HAA service, (iii) Deployment at extremely isolated posts (iv) Diving or submarine accidents, lost at sea (v) Service on sea (vi) MT Accidents involving loss of life or flying accidents in a service aircraft or aircraft accident involving loss of life in the station. (vii) catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies) alone and not under any other probabilities. According to the petitioner, the 1st respondent Tribunal erred in holding that he did not fall under any of the specified category in the Guide.

12. The petitioner aggrieved by the order passed in O.A.No.176 of 2021, preferred a Review Application in R.A.No.10 of 2023 before the 1st



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Respondent Tribunal. By an order dated 02.08.2023, the 1st respondent dismissed the Review Application.

13. The learned counsel for the petitioner would further submit that the findings arrived by the respondents 2 to 5 and the 1st respondent Tribunal is arbitrary and perverse. The learned counsel in support of his submissions for claiming disability pension would rely on the decision of the Honourable Supreme Court in the case of ***Union of India & Ors Vs. Angad Singh Titaria***, reported in ***2015 (12) SCC 257*** wherein, it is held that if the Personnel is found to be Physically and Mentally fit at the time of entry into service and subsequently discharged on Medical grounds, then such disability suffered by the said Military Personnel is attributable and aggravated. It is also held that in the absence of any specific note on record indicating the existence of said disability prior to joining the service, the said Military Personnel is entitled to disability pension. The learned counsel also submit that the impugned order passed by the 1st respondent is contrary to law laid down by the Honourable Supreme Court in the case of ***Union of India & Others Vs. Angad Singh Titaria***.

14. The learned Senior Panel counsel appearing for the Respondents



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would submit that the Expert Body Re-Assessment Medical Board has clearly

stated that disability was neither attributable nor aggravated by Military

service. The learned counsel relied on the judgment of Honourable Supreme

Court in the case of *Narsingh Yadav Vs. Union of India [Civil Appeal*

No.7672 of 2019] wherein it is held as follows:-

“ though the provision of grant of disability pension is a beneficiary one 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 to Military service.”

15. Heard both sides and perused the records carefully.

16. In the case on hand, the petitioner was assessed with 60% disability for 5 years and invalidated out from service in Low Medical Category “EEE (Psy) Permanent’ and was subsequently invalidated out from service with effect from 14.11.1998 under Army Rule 13(3) after rendering a service for a period of 7 years and 141 days. It is very specific case of the petitioner that he was not suffering from any disease prior to his joining the service. Since he is presumed to have been in sound physical and mental condition while entering service as per Rule 5(a) of the Entitlement Rules, he has been selected and



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given Military Training. Therefore, the findings of the respondents that the disability was not attributable to service, without giving a reason is nothing but lack of proper application of mind by the Medical Board.

17. In the case of *Laxmanram Poonia Vs. Union of India (2017) 4 SCC 697*, the Honourable Supreme Court, clearly held that 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.

18. Regulation 173 of Pension Regulations for the Army, 1961 specifically deals with the primary conditions for the grant of disability pension. It reads as under:-

“173. Primary conditions for the grant of disability pension.

— Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle



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casualty and is assessed at 20% or over.

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

19. A bare perusal of the aforesaid Regulation, it is clear that disability pension in normal course is granted to an individual:

(i) who is invalided out of service on account of a disability which is attributable to or aggravated by Military Service, and

(ii) who is assessed at 20% or at 20% or over disability, unless specifically provided otherwise.

20. A disability “attributable to or aggravated by military service” is determined as per the Entitlement Rules for Casualty Pensionary Awards, 1982, Appendix II. Rule 5 of the said Rules relates to approach to be adopted while considering the question of entitlement to casualty pension award. Rule 5 reads as follows:-

“5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical



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and mental condition upon entering service 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.”

21. 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. 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.

22. The Honourable Supreme Court in the decision in ***Dharamvir Singh's case [Dharamvir Singh Vs Union of India (2013) 7 SCC 316]***, quoted almost all the governing regulations and rules like Pension Regulations for the Army, 1961, the Entitlement Rules for Casualty Pensionary Awards, 1982 and Rules of Guide to Medical Officers (Military Pensions) 2002.

23. The Honourable Supreme Court in *Dharmvir Singh's case* summarized the legal position as under:-

“29. A conjoint reading of various provisions, reproduced



above, makes it clear that: 29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

29.4. 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)].

29.5. 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 [Rule 14(b)].

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29.6. 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 [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles”, including Paras 7, 8 and 9 as referred to above (para 27).”

24. For the above referred to Principles, in our opinion, the Medical Board Proceedings cannot be read in isolation. It has to be read in consonance with the Entitlement Rules for Casualty Pensionary Awards, 1982 and General Rules of Guide to Medical Officers (Military Pensions) 1982. As per Chapter II of the Guide to Medical Officers (Military Pensions), 2002, which relates to “Entitlement: General Principles”, it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and only after considering all the relevant particulars of a case, the board should record its conclusions with reasons so as to enable the Pension Sanctioning Authority to examine the question of entitlement of pension as per Rules 21.



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25. As referred to above, in *Dharamvir Singh's* case, it was observed that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the General Rules of Guide to Medical Officers (Military Pensions), 2002 “Entitlement: General Principles” Relevant extract in this behalf reads as under:-

“7. Evidentiary value is attached to the record of a member’s condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. “

26. Therefore, if the disease leading to member’s invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member’s Military Service

27. 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



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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. 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.

28. In the light of the above discussion, we hold that the Tribunal did not examine the case of the petitioner 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 EX. GNR. LAXMANRAM POONIA



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(DEAD) THROUGH LRS, case, it has to be presumed that the disability of the writ petitioner will be having a bearing in connection with the service conditions. The petitioner was diagnosed to be suffering from medical disability at 60% on 23.10.1998 and was invalidated out from service with effect from 14.11.1998. Therefore, the impugned order passed in O.A.No.176 of 2021 dated 01.02.2023 rejecting the relief sought for by the petitioner is not sustainable. For the reasons stated above, the petitioner is entitled to disability pension as per the Rules.

29. In the result, the impugned order dated 01.02.2023 is set aside and the Writ Petition is allowed. The respondents are directed to pay the disability pension to the petitioner as per the Rules and the same shall be complied within twelve weeks from the date of receipt of a copy of this order. No costs.

(J.N.B.,J.) (N.M.,J.)

nvsri

28.03.2024

To



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1.The Registrar, Armed Forces Tribunal

Regional Bench

Old MH Building, 1A, Rudra Road

St.Thomas Mount, Chennai-600 016

2. The Secretary,

Ministry of Defence

D.H.Q.PO, South Block, New Delhi-110 011

3.The Chief of Army Staff

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Order in
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