

2024:PHHC:166718-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-24907-2022
Reserved on: 28.11.2024
Pronounced on: 13.12.2024

Smt. KoshilyaPetitioner

Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. R.S.Panghal, Advocate
for the petitioner.

Mr. Bharat Bhushan Sharma, Sr. Panel Counsel
for the respondent-UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside of the order dated 04.02.2019 (Annexure P-1) as passed by the learned Armed Forces Tribunal concerned, whereby the claim of the petitioner for grant of family pension became declined.

Factual Background

2. The husband of the petitioner was enrolled in the Indian Army on 05.10.1963. During the course of military training, he was detected with a disability namely 'CSOM BILATERAL' and he was accordingly invalided out from service on 26.01.1964. The said

2024:PHHC:166718-DB



3. It was averred that during the course of training, the training instructor had severely slapped the husband of the petitioner, on his ears which led to her husband suffering from some auditory impairments. Therefore, though the slap delivered on the ear of the husband of the present petitioner led to the disability (supra) becoming entailed upon him. However, the claim for disability pension was declined on the ground(s) qua the supra disability being neither attributable to nor becoming aggravated by rendition of military service.

4. The husband of the petitioner expired on 23.05.2016. Thereafter, the petitioner forwarded the death certificate of her husband to the respondents alongwith with her representation dated 07.10.2016, thus claiming therein the endowment of family pension to her. However, the said representation was rejected vide order dated 25.10.2016 by the Department concerned.

5. Feeling aggrieved, the petitioner filed O.A., before the learned Armed Forces Tribunal concerned, thus for grant of family pension, from the date of death of her husband i.e. 23.05.2016. The said O.A., became dismissed vide order dated 04.02.2019. The operative part of the said order is extracted hereinafter.

“It is also pertinent to mention here that in the summary of the case, it is mentioned that the patient had told the Doctor concerned that he was having pus discharge from his right ear since the last 5 or 6 days but did not report that he would get well in due course. He has further stated that he had this problem off an on since the past 1-½

2024:PHHC:166718-DB



years. This summary was recorded on 24.10.1963 and his date of joining is 05.10.1963. So, according to the statement of the applicant's husband himself, this very disease existed much prior to his joining the service. Moreover, there is a clear endorsement of the Invaliding Medical Board to the effect that this disease did exist before entering in to service. So, the rulings cited by the learned counsel for the applicant are of no help to the applicant and accordingly, the applicant's husband was not entitled to any disability pension and, therefore, the applicant is also not entitled to any family pension.

6. Feeling dis-satisfied from the afore dis-affirmative order, the petitioner has filed the instant writ petition before this Court.

Inferences of this Court.

7. Ex facie, the husband of the present petitioner was invalided on account of a declaration becoming made by the invaliding medical board qua the husband of the present petitioner incurring the apposite disability which became assessed @ 40 % for life. However, the said entailed disability upon the husband of the present petitioner was further declared to be neither attributable to nor the same becoming aggravated by rendition of military service.

8. The reason for the above conclusion becoming recorded by the constituted invaliding board, reason whereof also became accepted by the learned Tribunal concerned, became hinged upon an admission which occurs at Annexure R-1, Annexure whereof comprises the proceedings of the invaliding medical board. The relevant portion of Annexure R-1, wherein, becomes echoed the apposite admission made

2024:PHHC:166718-DB



by the husband of the petitioner that he had suffered (supra) disability, eight months before his enrollment, becomes extracted hereinafter.

Part I

Personal Statement

1. xxxx
2. Give particulars of any diseases, wounds or injuries, from which you are suffering.

Illness, Wound, Injury	First started Date/Place	Where treated	Approximate dates and periods treated
SOM Rt ear	04.02.63/Jhully	Civil Hospital, Hissar	20 days (1 Sep to 20 Sep, 63)

3. Did you suffer from any disability mentioned in question 2 or anything like it before joining the Armed Forces ? Is so give details and dates. ***Suffered from the disability 8 months before enrollment.***
4. xxxx
5. xxxx
6. xxxx

Certify that I have answered as fully as possible all the questions about my service and personal history and that the information given is true to the best of my knowledge.

Signature of Witness

Signature (Sd/-by the soldier in hindi)

9. Though the said admission is made in column No. 3 of Annexure R-1, whereunders their exists the signatures of the present soldier. However, for the reasons to be assigned hereinafter, the signatured admission (supra), as made in the supra column of Annexure R-1, does gather any immense evidentiary worth. The reason for forming the above conclusion becomes grooved in the factum that :

- 1) The hand scribed writings in English in column No.3, rather not being proven to be made in the hands of the present soldier, wherebys, it is to be concluded that the said scribing in hand in English, in column No. 3, were not in the hands of the present soldier but were in the hands of some other person.

2024:PHHC:166718-DB



2) Consequently therebys, even if the husband of the present petitioner has signed the performa, in hindi, yet, since the writings as occur in column No. 3 are in English, therebys, it appears that the hand scribings in English in column No. 3, but obviously, *prima facie*, were not in the hands of the husband of the present petitioner.

10. The further consequent inference therefrom, but is that, since therebys suspicion surrounds the makings of the hand scribings in English in Column No. 3 of Annexure R-1, wherein, it becomes recited that the present soldier suffered the said disability prior to his being enrolled in the Army, therebys, the said suspicion thus also, *prima facie*, erases all the consenting effects thereof.

11. Now assuming that the husband of the present petitioner did scribe the recitals which occur in column No. 3 of Annexure R-1, yet since it is detailed in column No. 2 of Annexure R-1, that the patient became entailed with a wound on his right ear, therebys unless, the supra entailed wound on the right ear of the soldier, became investigated into by the Army Authorities, thereupon alone, the admission (supra) made in column No. 3, could be well depended upon by the Army Authorities.

12. Be that as it may, despite it being detailed in Column No. 3 of the performa, qua a wound occurring on the right ear of the soldier, which obviously was a fresh wound entailed thereons, as at the time of his enrollment, it was not noticed to be existing thereovers. Therefore,

2024:PHHC:166718-DB



it was an imperative requirement for the source of the wound or the origin of the wound being investigated into. However, the said investigation became never made despite the said becoming enjoined to be made. The reason for investigation thereins becoming made, arose from the factum, that suspicions for reason (supra) rather ingrained the makings of the admission in column No. 3, whereupons only, on the makings of the apposite investigations, thus they would have revealed whether the said admission was well founded or was ill founded. Moreover, thereby the engenderings of suspicion from occurrences thereins of hand scribings in English in column No. 3 thereof, whereas, the soldier signing in hindi at the foot of the performa, thus would have also become erased. Emphatically, the said remained unmade, despite the husband of the present petitioner alleging that he was slapped on his right ear by the training commander, besides despite in the apposite column a fresh wound being observed to be appearing thereovers.

13. Consequently, it appears that in a most slipshod and arbitrary manner, thus the signed admission which however for reason supra rather is suspicious, but became obtained from the present soldier, rather merely for depriving him, from his receiving disability pension, despite the entailment of an aggravated percentum of disability i.e. 40% and which also becomes detailed to be permanent in nature. As such, despite the magnitude of the disability and despite the allegations (supra) remaining un-proven, yet merely on a suspicious admission in

2024:PHHC:166718-DB



column No.3, thus it became untenably concluded that thereby the husband of the present petitioner is dis-entitled to disability pension.

14. The said premise also appears to be erected on the count that it was a congenital impairment.

15. However, a useful assistance for determining whether the befallment of any disease vis-à-vis any member of the defence personnel, but post his being enrolled in the army, despite at the initial stage, upon his becoming enlisted, as a member of the combatant defence establishment, rather the same remaining undetected, yet the apposite eruption, thus post enlistment hence being construable to be either congenital or being construable to become aggravated or being attributable to military service, thus is acquired, from, the principles set forth in the judgment rendered by the Hon'ble Apex Court, in case titled as ***Dharamvir Singh Vs. Union of India***, reported in **(2013) 7 SCC 316**. The relevant paragraphs of the said verdict are extracted hereinafter.

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated 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 or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) 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 r/w Rule 14(b)].

2024:PHHC:166718-DB



(iii) 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).

(iv) 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)].

(v) 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. [14(b)].

(vi) 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. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

16. An incisive reading(s) of the above extracted principles, though pointedly declare, that when a disability becomes entailed upon any member of the combatant defence establishment, and which is to the extent of 20 % or over, thereupon, though any such disabled member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

17. Nonetheless, the assignment of disability pension to any member of the combatant defence establishment, who becomes entailed with a disability in a quantum of 20 % or more, but imperatively requires a declaration from the Medical Board, rather candidly

2024:PHHC:166718-DB



becoming aggravated by military service. The said declaration becomes enjoined by the “*Entitlement Rules for Casualty Pensionary Awards, 1982*” of Appendix-II (Regulation 173).

18. Furthermore, though thereins a presumption is assigned vis-à-vis the sound physical and mental health of any member of the defence establishment concerned, especially when at the stage of his becoming enrolled, there is no note or record about his becoming beset with any disease. Moreover, though thereins there is also a further presumption, that when any deterioration theretos, thus occurs subsequently, thereby the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his rendering service as a member of the defence establishment. Imperatively, the onus for proving the non endowments qua benefits (supra) vis-à-vis the concerned, but is rested on the employer, and in case, the said onus remains un-discharged, thereupon, the claimant becomes entitled to receive disability pension. Moreover, all the facts and circumstances attendant to the rendition of service by the concerned, are to be closely scrutinized, thus for declaring whether the onset of any disease vis-à-vis the concerned, is a sequel qua renditions of military service and/or the same being aggravated by or being attributable to military service.

19. Be that as it may, thereins becomes also set forth a further principle(s) that yet there can be denial of disability pension to the concerned, but only upon :

2024:PHHC:166718-DB



a) At the time of acceptance of the concerned in military service, some notings becoming recorded by the Medical Board vis-a-vis his being beset with a disease which however, becomes concluded to be yet not rendering him unfit to become enlisted.

b) Any further deterioration thereof, may also subsequently become concluded by the Medical Board, to not arise from rendition of military service nor being attributable to military service, rather the same being a congenital disease.

20. Further, if the medical opinion holds that the disease could not have been detected on medical examination of the concerned being made, thus prior to his becoming enlisted in service, thereupon, the same will not be deemed to have arisen during service, yet in the situation (supra), the Medical Board is required to state the reasons for so concluding.

21. Moreover, it is also declared in supra, that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles".

22. Therefore, it has to be now determined whether in terms of the above principles, whether at the time of enlistment of the present soldier in the Army, thus after a preliminary medical examination being made vis-a-vis his health, thus a note became recorded about some

2024:PHHC:166718-DB



disease besetting him and/or whether some note became appended that the said disease was in a dormant stage. Moreover, it is also required to be determined, from the facts at hand, whether there is a causal nexus inter-se the eruption of the disease, and/or the onsettings thereof, on to his person, thus post the enrollment of the present soldier taking place, vis-a-vis the active renditions by him of military service, wherebys, this Court may conclude that the onset of the disease but rather was a sequel of his rendering service in the Army and as such was attributable or became aggravated by his rendering military service.

23. In addition, it is also required to be gathered from the records, whether the Medical Board, did initially proceed to make a detailed incisive antecedental check, particularly appertaining to the advent of the disease, through employments of State of Art medical techniques, thus unveiling the block chain genetic connection, wherefroms, rather the disease became sourced. Moreover, if the said employment fails. Resultantly, therebys it may become concluded qua eruptions thereof, thus subsequent to the apposite enlistment taking place, rather was not congenital but owed its origin to rendition of military service besides it being attributable to or becoming aggravated by performance of military service. Contrarily, if the supra employed techniques at the stage of apposite enlistment taking place, thus by the Medical Board concerned, leads to a conclusion, that there are rather dormant incidences of any disease, but yet the said dormant disease not prohibiting the enlistment of any personnel in the army, navy or air

2024:PHHC:166718-DB



force. Resultantly the subsequent active detection/eruption thereof, during the course of rendition of military service, but would naturally lead to a well conclusion by the Medical Board, that its active eruption but became sourced from an effective causal genetic connection wherebys there would be denial of disability pension.

24. However, now in the said endeavour, this Court is required to be extracting the contents of the opinion, as became recorded by the release medical board.

Opinion of the Medical Board

- 1. Did the disability/ies exist before entering service ? Yes
 - 2. a) xxxx
 - b) xxxx
 - c) xxxx
 - d) In the case of a disability under C, the board should state what exactly in their opinion is the cause thereof.
- The patient was suffering from the above disability before enrollment, vide clinical notes attached.***

25. A reading of the above though reveals that husband of the petitioner at the time of apposite enlistment taking place, thus he became entailed with the supra disability. However, the said fact is stated to arise from some clinical notes becoming attached with the enrollment forms of the husband of the present petitioner.

26. Nonetheless, since neither the clinical notes attached with the enrollment forms thus detailing therein that the husband of the present petitioner was entailed with a pre-existing disability nor also with the dates thereof emerging, thus for therebys this Court concluding that they were made in contemporaneity to the enrollment of the husband of the present petitioner in service. Consequently, for the

2024:PHHC:166718-DB



withholdings of the supra, it is to be concluded that the said clinical notes were purportedly not made at the stage contemporaneous to the soldier becoming inducted, rather were fabricated, so as to deprive the soldier from his earning disability pension despite the magnitude of the disability becoming incurred upon by the soldier.

27. In consequence it has to be declared in terms of the expostulations of law declared by the Hon'ble Apex Court in case titled as *Dharamvir Singh Vs. Union of India (supra)* that since no note became made in terms of the principles (supra), by the Medical Board, that some disease which however, did not forbid the present soldier, to become enlisted in the Army, did make its preliminary onsettings. If so, the declaration of law in judgment (supra) that therebys there is a presumption that the incurring of the said disease was a sequel of rendition of service, is required to be favourably endowed vis-a-vis the petitioner. Though the said presumption is rebuttable but the onus to lead evidence to rebut the said presumption became cast upon the respondent. However, the said cast evidence adducing discharging onus vis-a-vis the respondent, rather for cogently rebutting the said presumption, but naturally also did cast an onerous duty also upon the Medical Board, to engage itself in the endeavour of unearthing, through employments of the State of Art block chain genetic causal connection technique(s), wherebys it may became unraveled that the onsetting of the disease onto the army personnel, became sourced from antecedental genetic family history. Moreover, therebys it was also required to be

2024:PHHC:166718-DB



stated in the medical opinion, that the disease but for a well formed reason rather was a congenital disease and became neither aggravated by nor became attributable to military service.

28. However, when a reading of the (supra), discloses that the reasons, as became recorded by the Release Medical Board are for reasons supra rather engineered and fabricated, just for merely denying disability pension to husband of the petitioner, besides for precluding the making of a probe into the narrations reared by the deceased soldier, that he earned the wound (supra) through a slap becoming delivered thereons by the training instructor. Conspicuously also when it is revealed by a reading of column No. 2 of Annexure R-1, that it was a fresh wound.

Final Order of this Court.

29. In aftermath, this Court finds merit in the writ petition and with observations above, the same is allowed.

30. The impugned order (Annexure P-1) is quashed and set aside but with a direction to the respondents concerned, to process the disability pension case of the husband of the petitioner, besides grant him the benefits of roundings off as pronounced in a judgment rendered by the Hon'ble Apex Court in case titled as '*Union of India Vs. Ram Avtar*', reported in *2014 SCC Online 1761*, besides to further process the case for grant of family pension to the petitioner from the date of death of her husband.

2024:PHHC:166718-DB



31. The above exercise may be done within a period of three months from today.
32. Since the challenge made to the non granting of disability pension is belated, therefore, in terms of settled position of law, as pronounced in the verdicts rendered by the Apex Court in *Civil Appeal No. 5151-5152 of 2008 (Arising out of SLP (C) Nos. 3820-3821 of 2008 titled as Union of India and Others Vs. Tarsem Singh* and in *Civil Appeal No. 274 of 2007 (Arising out of SLP (Civil) No. 881 of 2006) titled as Shiv Dass Vs. Union of India and Others, decided on 18.01.2007*, the arrears shall be restricted for a period of three years from the date of filing of the instant writ petition.
33. Disposed of alongwith all pending application(s), if any

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

13.12.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No