



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

Judgment Reserved on: 13.08.2024
Judgment Pronounced on: 28.08.2024

+ W.P.(C) 16684/2023

EX SGT LAXMI NARAYAN PANDEY RETDPetitioner

Through: Dr. Abhay Kant Upadhyay, Adv.
versus

UNION OF INDIA AND OTHERSRespondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr.Srish Kumar Mishra,
Mr.Alexander Mathai Paikaday,
Advs. Mr.Kautilya Birat, GP.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner has approached this Court under Article 226 of the Constitution of India assailing the order dated 21.07.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi ('Tribunal') in Original Application ('OA') No. 1814/2019. Vide the impugned order, the petitioner's OA was dismissed by the learned Tribunal by holding that 'Schizophrenia', the invaliding disability from which the petitioner was suffering, was neither attributable to nor aggravated by military service.

2. One may recite the brief facts of the case by beginning to note that the petitioner joined the Indian Air Force ('IAF') as a Radio Technician on 11.05.1989 and was posted at 43 Wireless Experimental Unit ('WEU') (B)



in Chouhtan, Barmer, Rajasthan. In November, 1992, the petitioner, for the first time, reported uneasiness and sleep disturbances and had difficulty concentrating on his assigned tasks and duties. Initially, he was admitted to 7 Air Force Hospital ('AFH') on 26.12.1992 with the above symptoms. The petitioner was again medically examined on 15.09.1993 by the Specialist (Psychiatric) Medical Hospital, Jodhpur when he was diagnosed with 'Schizophrenia' and temporarily downgraded to low medical category: CEE (T-24) (PSY) for ID - SCHIZOPHRENIA vide AFMSF-15 dated 15.09.1993. As he was found to be still suffering from 'Schizophrenia', in the subsequent Medical Boards, he was on 15.02.2006 placed in a permanent low medical category: A4G4 (P) (PSY) in which category he remained till he was produced before the Release Medical Board ('RMB') held at HQ SWAC (U). On 14.10.2008, the RMB opined that the petitioner be released in low medical category; A4G4(P) (PSY) on account of the disability of Schizophrenia which was assessed at 30 percent for life and was held to be neither attributable nor aggravated by Air Force service. The opinion of the RMB was approved by Deputy Principal Medical Officer ('PMO'), HQ, South Western Air Command ('SWAC') IAF on 21.10.2008 and thereafter, by Air Officer Commander ('AOC'), Air Force Record Office ('AFRO'). Consequently, the petitioner, was after rendering service for 20 years and 20 days, discharged from service on 31.05.2009 with 30 percent disability.

3. The petitioner's claim for disability pension was however, rejected. The petitioner, therefore, preferred an appeal on 15.07.2019, which was followed by legal notice dated 13.08.2019, in response where to, his appeal was, vide order dated 17.09.2019, also rejected. The petitioner assailed the



rejection orders dated 04.11.2008 and 17.09.2009, before the learned Tribunal by way of OA No. 1814 of 2019.

4. The OA has been dismissed by the Tribunal vide impugned order dated 21.07.2023. Being aggrieved, the petitioner has invoked the jurisdiction of this Court praying for directions to the respondents to accept his disability as being attributable to or aggravated by military service and grant him 'invalid pension' at the rate of 30 percent, by rounding off the same to 50 percent, for life with arrears for 3 years prior to date of filing of the OA.

SUBMISSIONS OF THE PARTIES

5. Dr. Abhay Kant Upadhyay, the learned counsel for the petitioner submitted that the petitioner was medically fit and in good health at the time of his induction in the IAF without any disability being recorded by the respondents. He had undergone two years of rigorous military training and successfully passed the physical fitness tests. After thorough medical examinations at the Training Centre, he was assigned to various field and peace Units as required by the respondents. He submitted that for the initial three and a half years, the petitioner in his annual medical examinations, was always placed under Medical Category A4G1, indicating his continued fitness for military service. However, owing to environmental stress and organizational pressures, the petitioner developed 'Schizophrenia', in November, 1992 which disability persisted throughout his service tenure and is clearly attributable to service.

6. He further submitted that in 1991, when the petitioner was posted with 43 WEU(B), he while performing his assigned operational tasks was



bitten by a snake and taken to a nearby public health centre in Tahsil Chouhtan by the Dett. Commander, where he received a heavy dose of anti-venom. The authorities instructed him to keep this incident of 'snake bite' confidential so as to prevent a Court of Inquiry being held. The petitioner, who was already under significant stress and trauma on account of his deployment in a hostile and remote location, developed Schizophrenia at that stage. By placing reliance on a research paper by Michael Coffey of Swansea University, published in the Journal of Clinical Nursing, titled as "*Schizophrenia: A Review of Current Thinking and Research*", learned counsel for the petitioner submitted that stress is one of the causes for developing Schizophrenia.

7. The learned counsel for the petitioner further relied on the decision of the Apex Court in *Dharamvir Singh vs. Union of India and Others*, (2013) 7 SCC 316 and contended that the circumstances under which the petitioner developed Schizophrenia, clearly qualifies as a disability encountered during service which has to be presumed to be attributable to the service conditions.

8. Learned counsel contends that the learned Tribunal failed to consider that the petitioner's medical condition was attributable solely to service and he was therefore entitled to disability pension rounded off from 30 percent to 50 percent. The learned Tribunal, he submitted, has passed a mechanical order without appreciating the entirety of the facts and circumstances, which approach is also not in consonance with the welfare policy for a combatant member of the Defence Service, and is therefore subject to judicial review by this Court. In this regard, reliance is placed on the case of *Union of India Vs Parashotam Dass*, (2023) SCC OnLine SC 314.



9. *Per contra*, Mr. Harish Vaidyanathan Shankar, learned counsel for the respondents defended the impugned order and by drawing our attention to the Regulation 153 of the Pension Regulation IAF, 1961 (Part 1), submitted that the claim of the petitioner for disability pension was rightly rejected by the Tribunal as his disability was neither attributable nor aggravated by service rendered by him in the IAF. Moreover, a mere manifestation of a disease during service does not necessarily make it attributable to service.

10. Learned counsel by relying on paragraph 7 (a & d) of Chapter II of the Guide to Medical Officers (GMO), (Military Pension) 2008 contended that there are certain diseases like Epilepsy, mental disorders, HIV infections which have intervals of normalcy as well as of periodic attacks and ordinarily escape detection during the time of enrolment in service. Similarly, some congenital abnormalities are latent and can only be identified through a thorough examination, which may also get overlooked during a physical/medical examination at the time of enrolment. Nonetheless, the petitioner was examined by various Medical Boards during his service tenure wherein it was always opined that there was no causal connection between his disablement and IAF service to qualify as being attributable or aggravated due to service. The Medical Board's opinion, he contended, deserves due weightage as it is an expert body constituted especially for ascertaining the medical fitness of Force personnel.

11. In addition to the above, the learned counsel submitted that the petitioner has even otherwise not challenged the findings of the RMB and therefore, its opinion that his disability was neither attributable nor aggravated by service, is deemed to have been accepted by him and cannot be assailed at this stage. The petitioner's claim that the onset of symptoms of



Schizophrenia started after the alleged incident of a snake bite while performing his duties at 43 WEU (B), has been raised for the very first time before this Court in the present petition and is merely an after-thought. The petitioner had neither informed about the said incident to any of the Medical Boards or the RMB nor raised this plea before the learned Tribunal. The learned Tribunal, he contended, has dealt with entire factual matrix in great detail and has passed a well reasoned decision on the basis of facts and record produced before it and the impugned order therefore, does not require any interference by this Court.

ANALYSIS AND CONCLUSION

12. We have carefully considered the submissions addressed on behalf of the parties and perused the record. We find that both the parties are *ad-idem* that the petitioner is suffering from Schizophrenia from 1992 and was under medical observation since then. In support of his plea that the onset of Schizophrenia was attributable to military service, learned counsel for the petitioner vehemently contended that at the time of his induction in the IAF, the petitioner was subjected to thorough physical fitness test and other medical examinations. Had the petitioner been suffering from Schizophrenia, he submitted, the same would have been diagnosed at the initial stage itself and the petitioner would not have been inducted in the IAF. Further, the onset of Schizophrenia was after three and a half years of the service due to the stress and strain caused by environmental circumstances during his posting at 43 WEU (B), Barmer, Rajasthan, which place, he claimed was an extremely isolated location.

13. From the factual position noted herein above, the issue that we are required to adjudicate is whether the onset of Schizophrenia leading to the



disability of the petitioner, being assessed at 30 percent for life, is attributable to his service in the IAF and whether he is entitled to disability pension in accordance with the Rule 153 of the Pension Regulation of IAF, 1961.

14. As per various medical studies ‘Schizophrenia’ is a term used to describe ‘a mental disorder characterized by abnormalities in the perception or expression of reality’. As per these medical studies there is no known ‘single’ cause responsible for Schizophrenia. However, genetic, behavioral and environmental factors play a significant role in development of this mental health condition.

15. Before proceeding further, it would apposite to produce the Rule 153 of the Pension Regulation of the IAF which prescribes the primary condition for grant of disability pension, reading as under:-

“153. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II”.

16. Undoubtedly, the provisions for ‘disability pension’ and ‘invalid pension’ under the Pension Regulations are beneficial provisions for the service personnel of the ‘Forces’. Yet, the same cannot be used to claim benefits which do not accrue to the Force personnel, unless it is shown that the disability was attributable or aggravated due to military service. To determine this question, the Court has to necessarily rely upon the expert’s opinion rendered by the Medical Board, as the Court does not have the requisite expertise to appreciate and determine the medical issues on merits. Moreover, the scope of judicial review does not entitle the Court to embark



upon the accuracy of such an expert's opinion, until it is shown that same is patently illegal, biased or based on some extraneous factors.

17. In this regard, it would be relevant to refer to the decision of the Apex Court in *Secretary, Ministry of Defence and others vs A.V. Damodaran (dead) through LRs and others*, (2009) 9 SCC 140, which clearly brings out the following principles laid down with regard to the primacy of medical opinion:-

“8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medial category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and, of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the manner for ascertainment as to whether or not the Injuries/Illness sustained was due to or was aggravated by the military service which contributed to Invalidation from the military service.”

(Emphasis supplied)



18. We may also refer to the case of ***Dharamvir Singh vs. Union of India and Others*** (supra) wherein the Hon'ble Supreme Court has emphasised that in the absence of any disability or disease being recorded at the time of enrolment of a person in the Armed Forces and in a case where no justifiable reasons are put forth by the medical authorities for not being able to detect the disease at the time of enrolment, the presumption should be that the disability is attributable to or has arisen during the service, with the onus of proof lying upon the employer to prove non-entitlement for disability pension. The relevant observation of the Apex Court as contained in para no. 28 of the said decision reads as under:

"28. 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)].

(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."

19. From the aforesaid extract of the Apex Court's decision, on which heavy reliance has been placed by the petitioner, in itself is clear that the Courts are to be guided by the opinion given by the Medical Board to draw a conclusion as to whether a disease has any connection with military service or not, as the Medical Board basis its assessment on medical investigations and the clinical profile of the individual. However, before the findings of these experts can be relied upon by the Courts, it must be ensured that justifiable reasons are recorded in support of medical opinions, else such opinions may be amenable to challenge. In the instant case, what emerges is that the RMB, an expert body, has clearly expressed its opinion regarding the disability suffered by the petitioner as being neither attributable to nor aggravated by service and has specifically opined that the same was 'constitutional in nature'.

20. We may also now note the decision of the Apex Court in ***Union of India and Others vs. Angad Singh Titaria, (2015) 12 SCC 257***, wherein the Hon'ble Supreme Court dealt with the issue when a disability is attributable to or aggravated by military service, the following are the relevant extracts of the said decision:-

"9.The Pension Regulation have specified the circumstances under which disability pension could be granted to a person. Regulation No. 153 is relevant for the purpose, which reads thus:

153. Primary Condition for grant of disability pension--Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated/discharged from service on account of a disability which



is attributable to or aggravated by Air Force Service and is assessed at 20% or over.

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

10. Rule 4 of the Entitlement Rules makes it clear that invalidating from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as "invalidated from service". For the purpose of evaluation of disabilities, two presumptions are provided Under Rule 5. They read thus:

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 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.

11. Rule 9 of the Entitlement Rules mandates upon whom the burden lies to prove the entitlement conditions. The said rule is quoted below:

9. Onus of proof.-The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

12. While considering the aspect of onus of proof, this Court in Dharamvir Singh (supra) observed:

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.

13. Rule 14 of the Entitlement Rules stipulates how to determine whether a disease shall be deemed to have arisen in service or not. It reads thus:

14. Diseases--In respect of diseases, the following rule will be observed-

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fail for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be



stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted 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.

14. Thus, a plain reading of Sub-rule (b) of Rule 14 makes it abundantly clear that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds that the disease could not have been detected at the time of enrolment, the disease will not be deemed to have arisen during service. In that case, it is also important that the medical opinion must contain valid reasons that the disease is not attributable to service."

21. The position of law which emerges from Rule 153 and law enunciated above is whenever a Force personnel is found to be suffering from any disease, he is to be examined by medical experts, who are required to ascertain the nature of the disease but also record reasons as to the probable cause of such a disease.

22. We have also perused the original record of the petitioner produced before us. What emerges from it is that the onset of Schizophrenia was in the month of November, 1992 with the petitioner being prescribed medicines for the same at the time of his discharge from the hospital in December, 1992. Subsequent thereto, he suffered four relapses in the month of November, 1994, March, 2005, November, 2005 and January, 2006, for which the petitioner was required to be admitted in the hospital from time to time. The medical opinion reveals that the relapses were, sometimes, also on account of petitioner's withdrawal from medication and therefore, he was advised to continue his medication. It was the plea of the respondents that in the medical examinations held from 1992, it was consistently opined that



Schizophrenia, from which the petitioner was suffering, was neither attributable nor aggravated by service.

23. The RMB held on 14.10.2008 had specifically recorded in Part IV and V of its proceedings that the petitioner was an old case of Schizophrenia and the onset of this disability was from November, 1992. It was also opined that the disability was “not connected with service”, hence, would be neither attributable nor aggravated by service and was ‘constitutional in nature’. This opinion was recorded in accordance with instructions contained in ‘Guide to Medical Officers (Military Pensions), 2002’ and does not mention any contributory factor as being the cause for triggering the onset of Schizophrenia in the petitioner.

24. We also find from the record that the petitioner had never brought to the notice of the treating Doctor / Medical Board at any stage about any stress related to service, rather he had only been explaining about the symptoms of his disease. Moreso, he never even complained to his superior officers regarding the purported stressful conditions of service.

25. No doubt, it has been held in the case of ***Dharambir Singh vs. Union of India & Ors.*** (supra) by the Apex Court that the onus of proof is not on the employee but on the employer to prove the non-entitlement of the disability pension, however, in order to draw any presumption in favour of the petitioner, there must be some doubt about the categorical opinion given by the Medical Boards and the RMB. In the present case, the opinion of the RMB is clear that the disease was constitutional in nature. Further, the petitioner has not even assailed the findings of RMB, rather he had relied upon it for the purpose of claiming disability pension. As noticed above, the petitioner was diagnosed with Schizophrenia within about three and a half



years of his joining the Force. Further, during this 15 years when the petitioner continued to render service despite being diagnosed with Schizophrenia, he was excused from handling live arms and ammunition and was always assigned duties under supervision, as recorded in the Commanding Officer's statement dated 20.10.2008. Also, since 16.05.2005, the petitioner lived with his family rather than in the Unit lines and performed trade duties. Thus, his duties were with minimal stress and not of severe strain or stress. To the credit of the respondents, despite the restricted nature of duties which the petitioner could perform, he was not boarded out from service but retained in the Force for 20 years and 20 days in his consequently drawing regular pension.

26. We would also like to observe that the learned counsel for the respondents has correctly urged before us that the plea of a snake bite incident as being the trigger for the onset of Schizophrenia has been raised for the first time before this Court, no such plea having been taken before the RMB or even before the learned Tribunal, clearly indicating that the same was merely an afterthought.

27. In our considered view, even though the onset of the petitioner's disability was after about three and a half years of service, the consistent medical opinion that the same was not attributable or aggravated by his service and more specifically, the RMB's opinion that it was 'constitutional in nature' cannot be overlooked. For the aforesaid reasons, we find no ground to differ with the categorical opinion expressed by the RMB that the petitioner's disability had no connection with service and the same was neither attributable nor aggravated by service. We, therefore, find neither



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any infirmity in the impugned order nor any merit in the petitioner's claim for disability pension.

28. The writ petition being meritless, is dismissed.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 28, 2024 /SU/KM/SK