
Before M.M. KUMAR, J.

NO. 14541787 EX. HAV. JAIPAL,—*Petitioner*

versus

UNION OF INDIA,—*Respondent*

C.W.P. No. 10515 OF 2002

2nd March, 2005

Constitution of India, 1950— Art. 226— Army Rules, 1954— Rl. 13(3), 14— Pension Regulations, 1961 (as amended)— Paragraph 173— Entitlement Rules for Casualty Pensionary Awards, 1982— Invalidation of Petitioner out of Army service after rendering about 18 years service— Claim for disability pension— Paragraph 173 requires for entitlement to disability pension if an individual is invalidated on account of a disease which is attributable to or aggravated by military service— Petitioner found to be suffering from 'Generalised Seizure'— Neither any disease found by the Recruitment Medical Board nor any entry found in the record that petitioner was suffering from any constitutional disease at the time of joining service— Sub heading 'J' of Annexure III appended to 1982 Rules refers to diseases which are normally affected by service— Disease 'Generalized seizure' not relatable to any of the entry covered by sub 'J'— Respondents failing to prove that disease Generalized is a constitutional disease— Petitioner held to be entitled to disability pension— Petition allowed with costs.

Held, that the petitioner has been found to be suffering from Generalised Seizure. No such disease was admittedly found by the Recruitment Medical Board when the petitioner joined military service in 1981. On the repeated asking of the Court no record has been shown making such an entry by the Recruitment Medical Board in 1981. There is no list furnished to show that the disease 'Generalized Seizure 345' is relatable to any of the entry covered by sub head 'J' which gives classification of diseases and include the diseases not normally affected by service. According to the dictionary meaning of expression 'Generalised Seizure' is sudden attack of apoplexy which is a syndrome manifesting the inability to feel and move and might be caused by blockage or rupture of

brain artery. It is not easy to accept that such a disease cannot be caused during the stress and strain of military service. Moreover a very fascinating explanation has been tendered in reply to the assertion that the petitioner did not suffer from any disease when he entered service and was subjected to rigorous medical examinations by the Recruitment Medical Board. It is claimed that this type of constitutional disease could not be detected at that time as there was no elaborate medical apparatus available in the recruiting office. Firstly, such an explanation cannot be considered as a legal defence to a claim for pension because in all cases where the record is silent there such a defence could be asserted and the legitimate claim can be defeated. In any case by virtue of Rule 9 of the Entitlement Rules, the onus to prove that the Generalised Seizure is a Constitutional disease is on the respondents which they have miserably failed to prove.

(Para 11)

Brig. Rajinder Kumar, Advocate, *for the Petitioner.*

Anil Sharma, Advocate, *for the Respondent.*

JUDGMENT

M. M. KUMAR, J.

(1) This petition filed by Ex. Hav. Jaipal under Article 226 of the Constitution prays for quashing order dated 8th May, 2002 (Annexure P.3) passed by the First Appellate Committee upholding the order dated 4th October, 2000 passed by the Principal Controller Defence Accounts (Pension), Allahabad (for brevity, 'CDA'). The CDA had rejected the claim of the petitioner for grant of disability pension on the ground that invalidating disability, namely, Generalized Seizure was neither attributable to or aggravated by the military service. It was further observed that the disease 'Generalised Seizure' which resulted into invalidating out the petitioner was constitutional in nature and had nothing to do with the service. A further prayer has been made for issuance of directions to the respondents for release of disability pension because he has been assessed to be disabled to the extent of 20% in terms of paragraph 173 of Pension Regulations, 1961 (as amended) (for brevity, 'Pension regulations').

(2) Brief facts which are necessary for deciding the controversy raised in this petition, may first be noticed. The petitioner joined Army on 17th March, 1981. He was attested in the same year after rigorous training. At the time of his enrolment he was put through Medical Board and was found in category AYE one which meant no illness and medically fit. He served the army for 18 years, 9th Months and 15 days. He has been awarded various medals like Nine years long service medal, SSM, Long service medal with gratuity, and 50th year Independence Anniversary Medal. He claims to have served in all types of terrain in the country both in high altitude and inhospitable areas. He has been subjected to medical examination during his service every year. At no stage he was found to be suffering from such an ailment which could be relatable to an ailment anterior to joining of Army by the petitioner. It is claimed that the petitioner on account of rigors of service and service in inhospitable areas as well as in high altitude remained under tension both mentally and physically which was obviously on account of stress and strain of the service. The petitioner claim to have suffered the physical disability in June, 1996, which was diagnosed by the medical authorities as Psycho neurosis with disability named as 'Generalized Seizure'. On 31st December, 1999, he was invalidated out of service on the opinion expressed by the Medical Board which assessed the invalidity/disability at 20%. The petitioner claimed disability pension by placing reliance on Paragraph 173 of the Regulations but the same has been declined by the impugned order dated 4th October, 2000. The operative part of the impugned order reads as under :—

“REJECTION OF DISABILITY PENSION CLAIM

1. Controller of defence Accounts (Pension) Allahabad has decided that your invalidity disability Viz. **GENERALISED SEIZURE** is
 - (a) Neither attributable to military service.
 - (b) Nor aggravated by military service.
 - (c) Constitutional in nature and not related to service.
2. **ID REJECTED.**
3. In view of the above, disability pension is not admissible to you as per the rules.”

(3) After the rejection of his claim by the 'CAD', the petitioner availed the remedy of appeal which has also been rejected on 8th May, 2002 (Annexure P.3). Feeling aggrieved the petitioner has approached this Court.

(4) In response to notice of motion, reply has been filed and the stand taken in the reply is that on the basis of opinion expressed by the Release Medical Board which has been recorded after his physical examination the petitioner has been invalidated out of service. The Medical Board itself has opined disability as Generalized Seizure 345 and the petitioner is said to be covered by trade category being surplus under Item III(v) of Table annexed to Rule 13(3) of Army Rules, 1954. It has been concluded that it is neither attributable to, nor aggravated by, military service being the constitutional disease. In paras 2 and 3 a fascinating stand has been taken to meet the assertion of the petitioner that he did not suffer from any disease when he was subjected to medical examination at the time of recruitment. It is asserted as under :—

“the petitioner had undergone primary medical examination carried out at the time of recruitment by Recruiting Medical Officer, but, Constitutional Disease could not be detected at that time as there was no elaborate medical apparatus available to detect the Constitutional Disease in the Recruiting Office. Hence, the petitioner was found physically/medically fit, when he was enrolled in the Army.”

(5) It has further been claimed that disability pension should be paid only if two conditions are satisfied namely the disease has arisen during service and the conditions of the military service determined or contributed a set of disease or aggravated it. The Medical Board has opined that the disease of the petitioner is neither attributable to nor aggravated by the duties of military service and the same being constitutional a disease unrelated to the military service, therefore, the petitioner is not entitled to any disability pension. It is further asserted that there is not even a casual connection established between disablement of military service which might have been certified by the Medical authorities.

(6) Shri Rajinder Kumar (Brig.) learned counsel for the petitioner, has argued that under para 173 of the Regulations only two conditions are required to be fulfilled before an individual is considered for entitlement to a disability pension namely that he was invalidated out of service which is attributable to or aggravated by military service in non battle casualty and that he is assessed to disability to the extent of 20 per cent or over. He has then referred to Appendix II to ascertain the disability attributable to or aggravated by military service. In Annexure III to Appendix II under sub heading 'B' the disease affected by stress and strain is Psychosis and Pshyhoneurosis. According to the learned counsel it is not necessarily a hereditary disease which may fit in the category of constitutional disease. The learned counsel has further placed reliance on paragraph 5 to argue that unless there is an entry made at the time of enrollment with regard to constitutional disease an individual is presumed to be of sound and mental physical condition at the time of entering service. Admittedly there is no such entry and therefore it has to be presumed that the disease is attributable to or aggravated by the military service. Learned counsel has also made a reference to para 9 to argue that the benefit of any reasonable doubt in the absence of any entry has to be given to an individual even more liberally in service cases. Learned counsel has also made reference to Rule 14 to argue that if an individual has been discharged on account of medical disability then such a disability would be deemed to have arisen in service if no note of it was made at the time of entry of such an individual in military service. If the medical opinion holds that for reasons to be stated that the disease could have been detected on medical examination prior to acceptance of service then the disease may not be deemed to have arisen during service. According to the learned counsel no such opinion has been expressed by the Medical Board. Learned counsel has placed reliance on certain decisions of this Court in the cases of **Ex. Sep. Ranjit Singh versus Union of India and others (1)** **Naresh Chand versus Union of India (2)** **Shukdev versus Union of India (3)** and **Shripal Singh versus Union of India (4)** and argued that it cannot be concluded that the disability suffered by the disease Generalized Seizure suffered by the petitioner was not attributable to or aggravated by the military service.

(1) 2000 (4) S.C.T. 796

(2) 2001 (2) S.C.T. 618

(3) 2001 (1) S.C.T. 19

(4) 2002 (3) S.C.T. 807

(7) Shri Anil Sharma, learned counsel for the respondent has pointed out that ordinarily the Courts should respect the opinion expressed by the Medical Board and once this is the position in law then no exception can be taken in the present case to disregard the opinion expressed by the Medical Board to conclude to the contrary that the disease suffered by the petitioner was attributable to or aggravated to the military service. In support of his submission, learned counsel has placed reliance on the observations made by the Supreme Court in the case of **Ex. Sapper Mohinder Singh versus Union of India** (Civil Appeal No. 104 of 1991 decided on 14th January, 1993). Learned counsel has then argued that there are diseases like Asthama and Epilepsy which may not be noticed by the military authorities at the time of an individual entering into service. Therefore, such like diseases would be covered by constitutional disease and the petitioner would not be entitled to claim disability pension. In support of his submission, learned counsel has placed reliance on the observations made by a Division Bench of this Court in the case of **Ex. Spoy Balbir Singh versus Union of India and others** (CWP No. 7760 of 2004 decided on 18th May, 2004).

(8) Having heard learned counsel for the parties at a considerable length, I am of the opinion that a detailed reference would be necessary to the Pension Regulations as well as other relevant statutory provisions. In this regard Paragraph 173 of the Pension Regulations and Rules 3, 4, 5, 8, 9, 14, 15, and 16 of the Entitlement Rules for Casualty Pensionery Awards, 1982 (for brevity, 'Entitlement Rules') would be relevant which read as under :—

Paragraph 173 of the Pension Regulations

“173. 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 casualty and is assessed at 20 per cent or over.

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

Rules 3, 4, 5, 8, 9, 14, 15, and 16 of Entitlement Rules.

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3. There rules do not apply to the cases where disablement or death, on which the claim to casualty pensionary award is based, took place—
- (i) during the period from 3rd September, 1939 to 31st March, 1948, which will be dealt with in accordance with the entitlement criteria laid down in Annexure I.
 - (ii) during the period from 1st January, 1948 to 31st December, 1981, which will be dealt with in accordance with the entitlement rules promulgated,—*vide* Ministry of Defence (Pension Branch letter No. 138999/1/PC, dated 18th April, 1950, as amended from time to time ;
 - (iii) during the post - 1948 periods of emergency, which will be dealt with in accordance with Annexure II.

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4. Invaliding from service is 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. JCO/OR and equivalents on other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.

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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 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 in due to service.

8. Attributability/aggravation shall be conceded if casual connection between death/disablement and military service is certified by appropriate medical authority.

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9. 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.

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14. 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 fall or 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.

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15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. Disease due to infection arising in-service, will merit an entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such conditions which, if approved, could rule out entitlement of attributability but would require consideration regarding aggravation. For clinical descroption of common disease reference shall be made to the guide to Medical Officers (Military Pensions) 1980, as amended from time to time. The classification of diseases affected by environmental factors in service is given in Annexure III to these rules.

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16. Death or disablement resulting from such diseases other than veneral diseases contracted during service shall be regarded as attributable to military service. Where the disease may have been contracted prior to enrolment or during leave, the question of determining the incubation period in a particular case will arise and an opinion on this point should be expressed.”
- (9) It is also pertinent to make a reference to Annexure III appended to the Entitlement Rules which gives classification of diseases. Under sub-heading ‘A’ diseases affected by climatic conditions have been given and diseases affected by stress and strain have been given under sub-heading ‘B’. The disease Psychosis and Psychoneurosis has been given at serial No. 1 which obviously is a disease relatable to service. The aforementioned entries read as under :—

ANNEXURE III TO APPENDIX II

Classification of Diseases

A. DISEASES AFFECTED BY CLIMATIC CONDITIONS :

1. Pulmonary Tuberculosis.
2. Pulmonary oedema
3. Pulmonary Tuberculosis with pleural effusion.
4. Tuberculosis-Non-pulmonary.
5. Bronchitis.
6. Pleurisy, empyema, lung abscess, and Bronchiectasis.
7. Lobar pneumonia.
8. Nephritis (acute and chronic)
9. Otitis Media.
10. Rheumatism (acute and chronic)
11. Arthritis.
12. Myalgia.
13. Lumbago.
14. Local effects of severe cold climate-i.e., frost bite, trench foot and chilblains.
15. Effects of hot climate-i.e., heat stroke and heat exhaustion.

B. DISEASES AFFECTED BY STRESS AND STRAIN

1. Psychosis and Psychoneurosis.

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It is further evident that sub-heading 'J' refers to those categories of diseases which are not normally affected by service. These diseases are various types of cancer and the same read as under :—

J. DISEASES NOT NORMALLY AFFECTED BY SERVICE

1. Malignant diseases (Cancer and Carcinoma)
2. Sarcoma (except in cases of Sarcoma of bone with a history of injury due to service, on the site of development of the growth).
3. Epithelioma.
4. Rodent ulcer.
5. Lymphosarcoma.
6. Lymphadenoma, except of viral aetiology.
7. Leukaemia (except radiation effect).
8. Pernicious anaemia (Addison's disease).
9. Osteitis deformans (Paget's disease).
10. Gout.
11. Acromegaly.
12. Cirrhosis of the liver-if alcoholic,
13. Errors of refraction.
14. Hypermetropia.
15. Myopia.
16. Astigmatism.
17. Presbyopia.
18. Glaucoma—acute or chronic, unless there is a history of injury due to service or of diseases of the eye due to service.

(10) A perusal of paragraph 173 of the Pension Regulations envisages two conditions which are necessary to be fulfilled for earning a disability pension; : (a) disability pension may be granted to an individual who is invalidated out of service on account of a disease which is 'attributable to or aggravated by a military service' in a non battle casualty : (b) the disability is required to be assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service is required to be determined under the rules which are detailed in Appendix II. A conjoint reading of Rules 3, 4, 5, 8, 9, 14, 15 and 16 of the Entitlement Rules would make it evident that the petitioner has been invalidated out of service on

account of his lower medical category than that which he was recorded. It has to be presumed as per Rule 5 of the Entitlement Rules that the petitioner was in sound physical and medical condition when he entered service except a physical disability (ies) noted or recorded at the time of recruitment. In the event of his discharge subsequently from service on medical ground, any deterioration in his health has to be presumed to have taken place due to service. It is further clear from Rule 9 of the Entitlement Rules that it is not the duty of the petitioner who claims the pension to prove the condition that the disability suffered by him is attributable to or aggravated to military service and the benefit of doubt has to be given to him. Rule 14 reiterates that a disease which had led to discharge of a claimant will ordinarily would be deemed to be arisen in service in the absence of any note at the time of entrance in service. It is accepted by rule 15 that on set and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. In that regard the rule has guided as to make a reference to Annexure III (Appendix II) of the Entitlement Rules which classifies the diseases. Under sub-heading 'B' diseases affected by stress and strain have been listed and at item No. 1 is Psychosis and Psychoneurosis.

(11) The petitioner has been found to be suffering from Generalised Seizure. No such disease was admittedly found by the Recruitment Medical Board when the petitioner joined military service in 1981. On the repeated asking of the Court no record has been shown making such an entry by the Recruitment Medical Board in 1981. There is no list furnished to show that the disease 'Generalised Seizure 345' is relatable to any of the entry covered by sub-head 'J' which gives classification of diseases and include the diseases not normally affected by service. According to the dictionary meaning of expression 'Generalised Seizure' is sudden attack of apoplexy which is a syndrome manifesting the inability to feel and move and might be caused by blockage or rupture of brain artery. It is not easy to accept that such a disease cannot be caused during the stress and strain of military service. Moreover, a very fascinating explanation has been tendered in reply to the assertion that the petitioner did not suffer from any disease when he entered service and was subjected to rigorous medical examinations by the Recruitment Medical Board. It is claimed in paragraphs 2 and 3 of the reply that this type of constitutional disease could not be detected at that time as there was no elaborate medical apparatus available in the recruiting office. Firstly, such an explanation cannot be considered as a legal defence

to a claim for pension because in all cases where the record is silent then such a defence could be asserted and the legitimate claim can be defeated. In any case by virtue of rule 9 of the Entitlement Rules, the onus to prove that the Generalised Seizure is a constitutional disease is on the respondents which they have miserably failed to prove. In somewhat similar circumstances this Court in the case of Ex-Sep. Ranjit Singh (*supra*) who was invalidated out of service on account of Schizophrenia and Generalised Seizure has granted the benefit of disability pension. Similarly, in the case of Naresh Chand (*supra*) this Court granted the benefit of disability pension where the disability suffered was Generalised Seizure 345. Therefore, the instant petition is liable to succeed.

(12) The argument of learned counsel for the respondents that the opinion of the Recruitment Medical Board must be respected is liable to be rejected because no doubt has been expressed about the nature of disease which has led to the invalidating out of service of the petitioner. But at the same time, the nature of the disease cannot be accepted as non-attributable to service or the one not and aggravated by service because no such difference is classified in the list of diseases under sub-head 'J'. The aforementioned list has all the diseases which are cancerous in nature or related to eyes. Similarly, no entry has been found in the record of the petitioner certifying that at the time of joining Army in 1981, the petitioner was suffering from any constitutional disease. The observations of the Division Bench in Ex-Spoy Balbir Singh's case (*supra*) would not be attracted to the facts of the present case because disability assessed there was only 11.25%. It did not meet the basic requirement of Paragraph 173 of the Pension Regulations which required disability to the extent of 20%. However, the question whether the diseases which have remained unnoticeable at the time of recruitment could be considered as constitutional in nature being hereditary in character were neither debated nor answered in that case because the basic requirement of disability to the extent of 20% was not fulfilled. Therefore, the argument raised on behalf of the respondents is liable to and is hereby rejected.

(13) For the reasons stated above, this petition succeeds and the same is allowed. The respondents are directed to calculate the disability pension of the petitioner within a period of two months from today and to release the arrears within next two months along with interest at the rate of 8% per annum. The petitioner shall also be entitled to his costs which is assessed at Rs. 10,000.