REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5655 OF 2010
(Arising out of Special Leave Petition (C) No. 21998 of 2009)

Om Prakash Singh ... Appellant

Versus

Union of India & Others ... Respondents

SUPREME COURT OF INDIA
JUDGMENT

J U D G M E N T

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 27.3.2009 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No. 7834 of 2009.

3. The short question involved in this appeal pertains to the controversy whether the appellant is entitled to disability pension?

4. Brief facts which are necessary to dispose of the matter are recapitulated as under:

The appellant was enrolled in the Territorial Army on 28.9.1975 as a Sepoy. At the time of joining service the appellant was put through the medical test and was found medically fit. According to the appellant, while serving in the Army, he had contacted the disease known as "Unspecified Psychosis" on 26.6.1985, which is a psychiatric disorder. The appellant was treated in the Army Hospital at Delhi Cantt. On the recommendations of the Medical Board which assessed the appellant's disability as 40%, he was invalided out from the service. According to the Medical Board the disease of the appellant was neither attributable to nor aggravated by the military service.

5. The claim of the appellant for grant of disability pension was rejected by the competent authority. The appellant filed a Writ Petition (Civil) No. 838 of 2008 in the High Court of Delhi. There was a similar matter pending with the High Court and

the High Court by a common order dated 30.4.2008 directed the respondents to hold the Appeal Medical Boasrd with further direction that the parameters laid down by the High Court in the cases of ***Ex-Sepoy Gopal Singh Dadwal*** *v.* ***Union of India & Others*** (2007) 1 SLR 616 and ***Ex-Cfn Sugna Ram Ranoliya*** *v.* ***Union of India & Others*** 132 (2006) DLT 544 (DB) be taken into consideration.

6. The Appeal Medical Board opined that the disease of the appellant was neither attributable to nor aggravated by the military service because it was contracted in peace area. Aggrieved thereby, the appellant filed Writ Petition (Civil) No. 7834 of 2009 which was dismissed by the High Court. Hence, the present appeal by special leave.

7. We deem it appropriate to set out the relevant part of the opinion of the Medical Board. The same is as under:

"PART V
OPINION OF THE MEDICAL BOARD

Individual's Relationship of the Disability with Service conditions or otherwise

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/ cause/ specific condition and period in service
UNSPECIFIED PSYCHOSIS	No	No	Yes	*

* As per medical consensus, unspecified psychosis, like schizophrenia is caused by interaction of multiple genetic vulnerabilities coupled with environmental, biological, psychological and psychosocial stressors during early childhood development or structural and neuro-chemical damage to the brain in infancy manifesting in adult life as psychosis, hence it cannot be considered as attributable to military service. However, despite being a constitutional psychiatric disease benefit of doubt is given to an individual on possibility of stress and strain of service in war like situations, threat to life by enemy action in CIOPs or extreme environmental conditions of prolonged field/high altitude service, hastening the onset or aggravating it (as specified in Annexure I to Encirclement Rules – Classification of Diseases). However, no such stress/strain of military service as defined in Para 54 of Chapter VI of Guide to medical officers (military Pensions) 2002, which is considered stressful enough to hasten onset or aggravate the invaliding disease (ID), is evident in this instant case as individual did not serve in any field/CIOPs/High altitude areas or extreme environmental conditions and served only in peace stations (Cannanore and Delhi). In view of the above, as per the principles of military medicine, invaliding disease (ID) is considered neither attributable to nor aggravated by military service.

Sd/-	Sd/-
Col. A.T. Kalghargi	Brig.V.K. Kataria
Director (Pension)	Dy. DGAFMS(Pens)
Dir AFMS (Pension)	Office of DGAFMS
Office of DGAFMS	Min. of Defence
Min. of Defence, New Delhi	New Delhi.

Sd/-
NEATU NARANG
Lt. Col. AMC
Classified Spl (Psychiatry)
Base Hospital Delhi Cantt."

8. The appellant asserted that the entitlement to the disability pension flows from Regulation 173 of the Pension Regulations for the Army 1961 – Part I (hereinafter referred to as the Regulation). He further asserted that the High Court fell in grave error of law in not considering this mandatory provision. The relevant Regulation 173 of the Regulation reads as under:

> "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 percent or over.
>
> The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix-II."

9. According to the appellant, it is clear from the above-said Regulation that two conditions decide the entitlement to disability pension. The first condition is that he should be invalided out of service on account of disability which is attributable to or aggravated by military service. The second

condition is that the disability should be assessed at 20% or more. The assessment of percentage of disability is in the domain of the medical board which examines the physical conditions of the concerned official. In deciding the percentage of disability the medical board is guided by the Medical Regulations.

10. The appellant also submitted that whether a disability is attributable to or aggravated by the military service, has to be determined under the Entitlement Rules for Casualty Pensionary Awards 1982 (hereinafter referred to as the "Entitlement Rules"). According to the appellant, the opinion of the medical board in respect of attributability does not get supremacy and it is to be treated only of recommendatory nature. He submitted that the Entitlement Rules have to be applied to the facts and circumstances of each case to determine the attributability of a disease.

11. The appellant submitted that the Entitlement Rules are beneficial provisions and, therefore, to be interpreted liberally. These rules are made with the object of granting disability pension and not of denying it. He relied upon Rules 5, 9, 14

& 15 of the Entitlement Rules. The same are extracted as under:

"**Rule 5.** The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following:-

Prior to and During Service

(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.

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

Rule 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 course of the disease will fall 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.

Rule 15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dietary compulsions, exposure to noise, physical and mental stress and strain. Diseases due to infection arising in service will merit entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such condition which, if proved, could rule out entitlement of attributability but would require consideration regarding aggravation. For clinical discretion of common diseases reference shall be made to the Guide to Medical Officers (Military Pension) 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."

12. According to the appellant, the High Court fell in grave error in not considering the above stated rules. The rules are statutory in character and, therefore, were mandatorily required to be considered in deciding the attributability aspect. The appellant submitted that since none of the above

stated rules or regulation were considered by the High Court, the impugned judgment and order of the High Court is required to be set aside.

13. The appellant further submitted that at the time of entering into the service, on both occasions, he was found medically fit in all respects. Neither the appellant had any past psychiatric history prior to 26.6.1985 nor his family had any background of psychiatric history. Thus the invaliding disease arose during service and did not exist before joining the army service. The appellant submitted that his case is covered by Rules 5 and 14(b) of the Entitlement Rules. According to him, the High Court was wrong in not giving the benefit of Rule 15 of the Entitlement Rules.

14. The question whether a disability is attributable to or aggravated by military service shall be determined under the Rules in Appendix II. Relevant portion in Appendix II reads as follows:

> "2. Disablement or death shall be accepted as due to military service provided it is certified that—
>
> (*a*) the disablement is due to wound, injury or disease which—
>
> (*i*) is attributable to military service; or

(*ii*) existed before or arose during military service and has been and remains aggravated thereby;

(*b*) the death was due to or hastened by—

(*i*) a wound, injury or disease which was attributable to military service; or

(*ii*) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note.— The rule also covers cases of death after discharge/invaliding from service.

3. There must be a causal connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case."

15. Regulation 423 deals with "Attributability to service" and reads as under:

"423. *Attributability to service.*—(*a*) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose

of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(*b*) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of 'duty' in armed forces. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(*c*) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 service in the armed forces. 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.

(*d*) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, insofar as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(*e*) To assist the medical officer who signs the death certificate or the Medical Board in the case of an invalid, the CO Unit will furnish a report on:

(i) AFMSF 81 in all cases other than those due to injuries.
(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(*f*) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air)."

16. In ***Union of India & Others*** *v.* ***Baljit Singh*** (1996) 11 SCC 315 this Court observed as under:

> "*6.* ... It is seen that various criteria have been prescribed in the guidelines under the Regulations as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made amply clear from Clauses (*a*) to (*d*) of Para 7 which contemplates that in respect of a disease the Rules enumerated thereunder require to be observed. Clause (*c*) provides that 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. Unless these conditions are satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service."

17. A similar question came up for adjudication in the case of ***Union of India & Others*** *v.* ***Dhir Singh China, Colonel (Retd.)*** (2003) 2 SCC 382, wherein this Court in para 7 of the said judgment observed as under:

> "*7.* That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

18. A similar controversy came up before this Court in ***Union of India & Others*** v. ***Keshar Singh*** (2007) 12 SCC 675, in which this Court relied upon the Medical Board's opinion to the effect that the illness suffered by the respondent was not attributable to military service.

19. In the instant case, the records reveal that, in the opinion of the Medical Board, the condition of the appellant cannot be said to have triggered on account of the military service. In the opinion of the Medical Board, the disease was not at all attributable to the military service.

20. We have heard learned counsel for the parties at length. We are clearly of the view that the Medical Board is an expert body and they take into consideration all relevant factors and essential practice before arriving at any opinion and its opinion is entitled to be given due weight, merit credence and value.

21. In the instant case, the Medical Board has given unanimous opinion that the disease of the appellant was neither attributable to nor aggravated by the military service. The findings of the Medical Board has been accepted by the

Division Bench of the High Court. Thus, in our considered opinion, no interference is called for. The appellant is not entitled to the disability pension. However, in case some amount has ever been paid to the appellant towards the disability pension, the same may not be recovered from him.

22. The appeal being devoid of any merit is accordingly dismissed. However, in the facts and circumstances of the case, we direct the parties to bear their own costs.

..............................J.
(Dalveer Bhandari)

..............................J.
(Deepak Verma)

New Delhi;
July 20, 2010