2025:PHHC:007242-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-24422-2024
Reserved on: 28.11.2024
Pronounced on: 18.01.2025

UNION OF INDIA AND ORS. .....Petitioners

Versus

No. 764851 T SGT SANJEEV KUMAR AND ANR. .....Respondents

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

Argued by: Mr. Ashish Chaudhary, Advocate
for the petitioners/UOI.

Mr. Jagdeep Jaswal, Advocate
for respondent No. 1

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein-Union of India, prays for the setting aside of the order dated 25.04.2023, (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, wherebys the claim of respondent No. 1 for the grant of disability pension was allowed.

Factual Background

2. Respondent No. 1 was enrolled in Airforce on 24.03.1998 and was invalidated out from service on 31.03.2018, post rendering 20 years and 8 days of regular service. During the course of his service, respondent No. 1 was treated to be a patient of slip disc and was accordingly placed in low medical category A4G4 (P) on 19.08.2014, and subsequently he was placed in low medical category A4G2 (P) on

29.09.2015. Moreover, the release medical board of respondent No. 1 as held on 24.05.2017 rather owing to the aforesaid disability, thus declared him unfit to be retained in service, besides assessed the percentum of his disability @ 10%.

3. The disability element claim of the respondent was rejected by the Competent Authority, thus on the ground that the supra disability was neither attributable to nor being aggravated by rendition of military service.

4. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order. The said O.A., became allowed vide order dated 25.04.2023. The operative part of the said order is extracted hereinafter.

> *"9. In the case in hand, as per the proceedings of Categorisation Medical Board Annexure A-3 and Annexure A-4 the disability incurred by the applicant @ 20% is aggravated by military service (Reply to question No. 18). Again in Annexure A-5 (Question No. 18) the report of Categorisation medical board dated 02.09.2016 the disability PIVD L-5 S1 (LT) (Old) M 51.9 Z 09.0 assessed @ 20 % has been held to be aggravated by military service. However as per Annexure A-14 Medical Board Proceedings dated 10.05.2018 the disability has been reduced to 10 % and Nil for life and held neither attributable to nor aggravated by military service. It is surprising that the disability assessed as aggravated twice prior to that has been held neither attributable to nor aggravated by military service that too when the applicant*

suffered with spinal problem as per proceedings of Medical Board referred to hereinabove. Once the disability the applicant incurred upon is held to be aggravated by military service the subsequent proceedings regarded the same as neither attributable to not aggravated by military service is not sustainable in the eyes of law.

10. As a matter of fact, when the applicant has been invalided out from service, he is entitled to the grant of disability pension irrespective of the percentage thereof as per the ratio of the judgment of the Hon'ble Apex Court in the aforesaid case.....”

5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.

Inferences of this Court.

6. Before proceeding to make an effective adjudication upon the present writ petition, 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)].

(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.

7. 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.

8. 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 pronouncing that the said attained disability being attributable to or becoming aggravated by military service. The said declaration becomes enjoined by the *"Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

9. 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, therebys 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.

10. 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 :

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 thereofs, 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.

11. 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, thereupons, 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.

12. 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".

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

14. 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 force. Resultantly the subsequent active detection/eruption thereofs, 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.

15. 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. In the said regard, the order made on 29.06.2018 (Annexure P-3), by the Gp Capt, Medical Advisor, upon the disability pension claim of respondent No. 1, is extracted hereinafter.

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"1. Reference is made to the Release Medical Board proceedings in respect of above named individual dated 24 May 2017 and approved by higher medical authority on 10 May 2018.

2. The individual has the following disability :-

PIVD L5-S1 (Lt)

3. The disability is considered as neither attributable to nor aggravated by service as per Para 51 of Chapter VI of GMO 2008. This has been assessed as 6-10 % of disability for life as the individual has given unwillingness for surgery. The board has recommended his release from service in low medical category A4G2 (P).

4. *As his disability is considered as neither attributable to nor aggravated by service, he is not entitled to any disability pension. This decision must be communicated to the individual by registered post.*

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16. A reading of the records reveals that at the time of the apposite enlistment taking place rather no note became made in terms of the principles (supra) declared by the Hon'ble Apex Court in case titled as ***Dharamvir Singh Vs. Union of India (supra)*** by the Medical Board, that some disease which however, did not forbid the present respondent, 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 respondent. Though the said presumption is rebuttable but the onus to lead evidence to rebut the said presumption became cast upon the petitioner. 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 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.

17. However, a reading of opinion (supra), discloses that it has been recorded in a stereo typed form and no reasons have been recorded to the extent (supra). Reiteratedly, since no evidence to rebut the presumption (supra) has been led by the petitioner, therebys, this Court is constrained to give no weightage to the opinion of the medical board, as extracted (supra). Conspicuously, therebys no credence can be assigned to the supra ill informed reason, besides therebys the onsetting of the disease cannot be said to be a sequel of antecedental genetic family history. Contrarily, it is required to be declared to arise from rendition of military service. In addition, it is required to be declared to be attributable or becoming aggravated by rendition of military service by the present respondent.

18. Moreover, a perusal of records reveal that respondent No. 1 was categorized under Medical Category A4G4(P) on 29.09.2015 and

his disability was assessed @ 20 % being aggravated by service. Furthermore, as per the report of categorisation medical board dated 02.09.2016, again his disability was assessed @ 20 % being aggravated by service.

19. However, as per the Medical Board Proceedings held on 10.05.2018, his disability was reduced to 10 % besides was declared as neither attributable to nor aggravated by rendition of military service.

20. It is extremely enigmatic, that when the percentum of disability entailed upon the present respondent No. 1, was on the earlier two occasions thus assessed @ 20 %, besides was declared to become aggravated by rendition of military service, but yet it becoming ultimately declared to become borne in 10 %, besides becoming declared to be neither attributable to nor becoming aggravated by rendition of military service. The final opinion (supra) wherebys the disability entailed upon the present respondent No. 1, was declared only upto 10 %, whereas, the earlier opinions declaring the same to be in 20% and also becoming declared to become aggravated by military service, thus makes the last opinion to be suffering from lack of application of mind and also is to be declared to be suffering from the vice(s) of the same becoming not founded upon any ably recorded reasons.

21. Therefore, for all the aforesaid reasons, the supra opinion recorded by the release medical board is required to be discarded.

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Final Order of this Court.

22. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.

23. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.

24. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

18.01.2025
kavneet singh

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