

IN THE HIGH COURT OF DELHI

+ W.P.(C) No. 121/2006

% Judgment reserved on : July 03, 2006  
Judgment delivered on : July 27, 2006

# Sepoy Jeet Singh

....Petitioner

! through: Mr. J.S. Manhas,  
Advocate.

Versus

\$ Union of India and Ors.

....Respondents

^ through : Ms. Richa Kapoor,  
Advocate for UOI.  
Col. T. Parshad, Dy. JAG.

AND

+ W.P.(C) No. 879/1998

# Ex. Grenadier Mohd. Rafik

....Petitioner

! through: Mr. C.M. Khanna,  
Advocate.

Versus

\$ Union of India and Ors.

....Respondents

^ through : Col. T. Parshad, Dy. JAG.

W.P.(C) Nos. 121/2006 and 879/1998

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CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

SWATANTER KUMAR, J.

1. This common judgment shall dispose of the above mentioned two writ petitions. At the very outset, we would refer to the facts of each individual case.

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2. Sepoy Jeet Singh was recruited in the Army on 4.4.2001 after having been subjected to a medical fitness test. While he was posted to 20 JAT Regiment, an infantry unit stationed at a high altitude area in Sikkim, where the petitioner served for about one year, he suffered from mental

breakdown, which according to him was because of hazardous and strenuous conditions of service at such a high altitude. He suffered this problem on 23.3.2002 and later on was admitted to M.H. Meerut on 24.6.2003. On 18.10.2003 the IMB examined the petitioner and after having been found medically unfit to continue in Army Service, he was invalidated out of Army Service in permanent low medical category S5 with 50% Medical Disability. According to the petitioner, as per the medical records the disease of the petitioner was attributable to army service and he was entitled to receive disability pension. However, vide letter dated 19.10.2004, the petitioner was informed that the claim of the petitioner for grant of disability pension was declined by CDA(P) vide their letter dated 10.9.2004, against which the petitioner preferred an appeal on 17.1.2005. Despite that no relief has been granted to the petitioner resulting in filing of the present writ petition.

3. Counter affidavit to the writ petition was filed. The facts stated in

the petition are not really in controversy but it has been stated that the petitioner has incorrectly stated the facts. It is stated that the Invaliding Medical Board held on 8.9.2003 at M.H. Meerut had found the petitioner to be suffering from "SCHIZOPHRENIA (ICD 10 F-20) and had assessed the invaliding disability at 50% "neither attributable to nor aggravated by" Military Service, as a result of which the petitioner could not be granted any relief in terms of Rule 173 of the Pension Regulations for the Army, 1961 and the claim of the petitioner, thus, was rejected and the appeal preferred by the petitioner is still pending consideration.

**W.P.(C) No. 879/1998**

4. The petitioner, Ex. Grenadier Mohd. Rafik, was enrolled in Army as a Sepoy on 27.8.1992 after having been put to stringent physical and medical tests. He served the Army for a short duration. On 21.1.1994 he fell unconscious after suffering from severe abdomen pain and was taken to the hospital. He was given medical treatment and on 14.2.1994, the petitioner

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was placed in temporary low medical category for six months on the suspicion of epilepsy. The Review Medical Board of the petitioner was held at M.H. Gwalior and Command Hospital, Lucknow in the months of August-September 1994, where on the suspicion of 'Epilepsy' the petitioner was recommended to be discharged from service. He raised a claim for disability pension which was rejected by the respondents on 22.1.1996, against which the petitioner preferred an appeal which was also rejected on 11.11.1996. The petitioner claims to have served different reminders on the respondents no.3 and 4 but of no consequence and thus, the petitioner filed the present writ petition claiming the relief in the year 1998. It is contended by the petitioner that even the recording of the disease of epilepsy by the Medical Officer is not in conformity with the duties of the Medical Officer and the instructions issued by the Army Headquarters. According to the petitioner it was required of the Medical Officer to observe the petitioner personally for a definite duration and particularly in the case of epileptic

attacks before he could record such a finding. Furthermore, the Medical Board proceedings which were recorded on 10.10.1994 declared the disease of the petitioner as 'Generalised Tonic Clonic Seizure' and the reason or the cause of the disease is shown to be 'disorder of nervous system of an unknown actiology'. In other words, the cause and origin of the disease was not even clear to the Medical Authorities for which the petitioner was invalided out of the Military Service. The appeal of the petitioner has been rejected by an unreasoned order.

5. There is no dispute to the fact that the petitioner was examined and put to rigorous medical tests before he was inducted into medical service. Thus, it was obligatory upon the authorities to clearly answer whether the cause, onset and progression of the disease was attributable to and/or aggravated by military service with reference to certain investigations.

### **Conclusion**

6. As is evident from the above narrated facts of both the petitions, the

petitioners in both the cases served the Army including their training period for a period of less than 2 years and during that period their mental disease, i.e. 'SCHIZOPHRENIA' and 'EPILEPSY' had manifested to a great extent.

There is no doubt that in certain cases various courts have taken the view that Schizophrenia is a disease which is attributable to and can be aggravated by military services. But still the petitioners have placed no evidence before the court to show that they had not suffered from such disease prior to their induction into Army. To some extent, the onus to show that the report of the Medical Board is perverse or is contrary to the medical essence is upon the petitioner. In view of the detailed judgment of this Court in the case of Ex. Cfn. Sugna Ram Ranoliya vs. Union of India and Ors., W.P.(C) No. 3699/2004 of the same date, there could be a reasonable doubt as to whether the disease in the present case was a 'Constitutional Disorder' as described in the form or was it *ex facie* attributable to or aggravated by military service. The observations made by

the graded Specialist, (Psychiatry) are not totally adverse to the interest of the petitioners. According to that report, the onset of illness is gradual since March'02. The principles of law applicable to such cases have been stated with some elucidations in the case of Ex. Cfn. Sugna Ram Ranoliya (*supra*) and upon the cumulative effect thereof, we are unable to grant the relief to the petitioners in the present petitions and particularly in view of the fact that the appeal preferred by the petitioner (in WP(C) 121/2006) on 17.1.2005 is stated to be still pending before the authorities.

7. The cause, onset, progression and future of the disease of the petitioner are some of the very pertinent aspects of the decision making process by the respondents. During the course of hearing in some of these writ petitions, we had even asked for presence of Senior Medical Specialists in the Court. The Court was informed that the expression 'Constitutional' is used to normally refer to the fact 'that exact cause of the disease cannot be reasonably diagnosed by the concerned authorities'. If that be so, no



inference could be drawn, disadvantageous to the petitioners, particularly in absence of any proper medical examination and reasoning placed on record.

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7. In order to avoid repetition, the reasons recorded by us in W.P.(C) No. 3699/2004 should be read as part of this judgment.

8. For the reasons aforestated, we would partially allow these writ petitions and direct the respondents to :-

(1) Subject the petitioners to Appellate Medical Board, who should examine the petitioners, if necessary, and direct such investigations as the Appellate Board may deem fit and proper in the circumstances of the case.

(2) The Medical Board shall record the cause, onset and progression of the disease, including its attributability and/or aggravation by military service. These observations should be recorded in light and in the manner as indicated in the judgment in the case of Ex. Cfn. Sugna Ram Ranoliya (*supra*).

(3) The appeal preferred by the petitioner (in W.P.(C) NO. 121/2006) shall be disposed of by the authorities within a period of three months from the date of the pronouncement of this judgment. Needless to note that the Medical Board of the petitioner should be conducted prior thereto and report thereof be placed before the Appellate Authority.

9. These writ petitions are disposed of with the above directions, while leaving the parties to bear their own costs.

  
(SWATANTER KUMAR)  
JUDGE

  
(G.S. SISTANI)  
JUDGE

July 27, 2006

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Fresh CM 9737/11 - u/s 151 CPC for dirs.  
- W.P.C. disposed of on 27/7/06