HIGH COURT OF JAMMU & KASHMIR AT JAMMU

LPA (SW) No. 22/2006

Date of Decision : 25 .11.2008

Union of India & Ors. vs. Nar Singh Dev Singh

Coram:

Hon'ble Mr. Justice Y.P. Nargotra, Judge
And
Hon'ble Mr.Justice Vinod Kumar Gupta, Judge

Appearing Counsel:

For the appellant(s): Mr.Tashi Rabstan, ,CGSC

For Respondents : Mr.S.K. Shukla,Advocate

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i/ Whether to be reported in press, Journal/Media : Yes/No

ii/ Whether to be reported in Digest/Journal : Yes/No

Per Vinod Kumar Gupta J.

The appellants have preferred this Letters Patent Appeal against the order dated 24.9.2005 passed in SWP No. 2354/2000 whereby the learned Single Judge after allowing the petition of the respondent has directed to process the case of the petitioner/respondent herein for grant of disability pension and grant the same as admissible under rules.

The material facts for disposal of this appeal are that the respondent Nar Singh Dev Singh was recruited in Indian Army on 26.11.1979 on being subjected to other tests including medical examination. While serving in the Army, he suffered from FITS-

NYT in the year 1981 and was placed in EEE medical category. His disability was assessed more than 50% and boarded out on medical ground vide discharge order dated 26.2.1982. The case of the respondent for grant of disability pension was forwarded to Controller of Defence Accounts (Pension), Allahabad, but his claim for disability was rejected on the ground that the disability suffered by the respondent was neither attributable to nor aggravated by military service. The respondent challenged this communication by way of SWP No. 2354/2000 in this court seeking quashment of aforesaid communication and direction for grant of disability pension. The learned writ court vide order dated 24.9.2005 has allowed the writ petition and directed the appellants herein to process the case of the petitioner/respondent for grant of disability pension on the basis of disability assessed by the Medical Board and grant disability pension to the petitioner as admissible under rules.

Being aggrieved by this order, the appellants herein have preferred this Letters Patent Appeal.

We have heard the learned counsel for the parties and perused the record.

The learned counsel for the appellants have contended that the Medical Board has given its opinion that the disability of the petitioner was not attributable to the Military service nor it was aggravated thereby and thus the respondent is not entitled to disability pension. He has further argued that the disease is

constitutional in nature. On the other hand, the learned counsel for the respondent has submitted that since at the time of induction of respondent into army he was medically fit at that time, therefore, it is to be presumed that the respondent has suffered the disease during his service because of the conditions of military service and thus the respondent is entitled to disability pension.

From the report of the Medical Board it is apparent that the respondent was invalided out of service on 19.8.1995 on account of disease namely, FITS-NYD and was placed in ‘EE’ category. It is also stated that the said disease is constitutional in nature. There is nothing on record to show that the respondent was suffering from any such disease at the time of entry into the Military service.

Regulation 173 of Pension Regulations for Army 1961 provides conditions on which disability pension can be granted to any person who is invalided out of service on account of any disability. This regulation reads as under:-

> ‘Primary conditions for the grant of disability pension.
>
> 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 disability which is attributable to or aggravated by military service and is assessed at 20 per cent or above.’
>
> The question whether a disability is attributable to or aggravated to by military service shall be determined under the rule in Appendix-II.’

This regulation clearly lays down that the disability pension is granted to an individual who is invalided out of service on

account of disability which is attributable to or aggravated by military service and is assessed at 20% or above.

Now the question involves in this appeal is whether the respondent suffered the disease because of stress and strain of military service and the same is attributable to or aggravated by such service. In this case as stated above the respondent was not recorded to be suffering from the disease mentioned above when he was enrolled in the service. He suffered this disease during the service and the learned writ court after relying upon number of decisions of this court and rules and regulations applicable, has come to the conclusion that the respondent suffered the disease of FITS-NYD which was the result of stress and strain of military service and the same is attributable to or aggravated by the said service. In our view, learned writ court was right in holding so because if a person contracts a disease during his military service, it is presumed that the person suffered this disease due to the conditions of military service and is attributable to or aggravated by military service in case it is not rebutted otherwise.

The contention of learned counsel for the appellant that the respondent was suffering from a disease which is constitutional in nature and as such it cannot be said that this disease has arisen during service or its being aggravated due to conditions of military service, cannot be accepted. As stated above, there is nothing on record to show that any note was made at the time of respondent's entry into military service that he was suffering from any such

disease. The disease on account of which the respondent was invalided out though constitutional in nature yet to be deemed to have arisen during service on the basis of presumption because no note of such disease was recorded in medical report of the respondent at the time of his entry into military service. Even if this disease was dormant at the time of entry of respondent into military service, still it is to be accepted that this disease has aggravated by stress and strain as a result of conditions of military service.

The same view was taken by the Division Bench of this court in LPA(SW) No. 212/2006 entitled Union of India & Ors. Vs. Ravinder Kumar decided on December 31, 2007. One of us (Y.P. Nargotra J.) held after discussing the rules and regulations and different judgments of Hon'ble Supreme Court as under:-

> "Thus any such disease which under clause (c) is to be presumed to have arisen during service if falls in any of the categories of the diseases indicated in Annexure-III, it may be presumed to have aggravated by the facts indicated against such disease in Annexure-III. For instance in B category of Annexure-III diseases have been indicated which are affected by stress and strain. Thus if an individual is found to suffer from psychosis with disability of 20% or more during service and such disease even if constitutional in nature is to be deemed to have arisen during service in terms of Clause (c), and that it was aggravated by stress and strain. As in terms of Rule 9 of Appendix-II the claimant is not required to prove his entitlement, therefore, if there is no material before the Pension Sanctioning Authority that stress and strain was not involved in discharge of the military duty, it would have no option but to

> concede the aggravation by accepting that stress and strain was caused by the military duty.
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> In the instant case the disease on account of which the respondent was invalided out though constitutional in nature yet to be deemed to have arisen during service on the basis of presumption under clause (c) of Regulation 423 falls in category-B of Annexure-III to Appendix-II being a neurotic disorder, is to be accepted to have aggravated by stress and strain. No material has been placed on record by the appellant to show that stress and strain could not have been the result of conditions of military service, therefore, it has to be accepted that the stress and strain which aggravated the disease was due to the conditions of military service.め

For the foregoing reasons, we would hold that the learned writ court was correct in holding that disease of FITS-NYD from which respondent suffered is a disease which was the result of stress and strains of military service and the same is attributable to or aggravated by the said service and thus the respondent is entitled to disability pension.

This Letters Patent Appeal of the appellants is without any merit and deserves dismissal. Accordingly, this LPA alongwith connected CMP is dismissed.

(Vinod Kumar Gupta)
Judge

(Y.P. Nargotra)
Judge

Jammu
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