

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
SWP No. 1358/05**

Madan Lal Vs. Union of India and Ors.

Coram:

The Hon'ble Mr. Justice Sunil Halli

Appearing counsel :

For the petitioner(s) : Mrs. Surinder Kour, Adv.

For the respondents(s): Mr. P.S.Chandel,Adv.

i) Whether to be reported in

Press/Journal/Media **Yes/No.**

ii) Whether to be reported

in Digest/Journal **Yes/No.**

After serving in the Army for more than 22 years, petitioner was discharged from service on account of down grading of his medical category. The petitioner was found to be suffering from "BLUNT INJURY (RT) EYE WITHY TRAUMATIC CATRACT N-897,E-928 V-67 Z-09, which

was mentioned in the report that the injury was not connected with the service. In essence, it is stated that the injury was not

attributable to or aggravated by the military service.

Aggrieved by this order, present petition has been filed.

The petitioner contends in his writ petition that he was discharged from service on 1-1-2003 after having served in the army for 22 years, 8 months and 7 days. He was invalidated from service on account of down grading of his medical category. Petitioner's contention is that the aforementioned injury was incurred and aggravated during the military service. Petitioner states that he had served in the army for more than 22 years and at the time of his initial recruitment, no such injury was detected by the medical board.

The stand of the respondents is that injury suffered by the petitioner was not attributable to or aggravated during military service. The opinion of the medical board is a final word and cannot be questioned before this court. The appeal filed by the petitioner was also rejected by the respondents. Regulation 173 of the Pension Regulations, 1961 provides that disability pension consisting of service element and disability

element may be granted to an individual who is invalidated 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% or over. Where the disability has not been attributable to military service, no disability pension is payable to an individual. In this respect, opinion of the medical board will hold good. However, in terms of Regulation 173 Appendix-II sub rule-7 makes it incumbent that a note is to be appended regarding the disease or injury of an individual at the time of his initial recruitment by the medical board. However, the medical opinion holds for the reasons to be stated that the disease could not have been detected on medical examination prior to the acceptance in the service. This safeguard has been provided in order to ensure that the person who has suffered any disability after joining the service, is not thrown out on the whims and caprice of the authority. The note is required to be appended that the said disease could not have been detected at the time the petitioner was recruited. At

the time of boarding out, the board was required to indicate that this disease could not have been detected at the time of initial recruitment and also that it could not have been aggravated during the course of military service. Scanning through the report of the medical board, none of these conditions have been complied with by the respondents. There is no certificate issued by the board that the aforesaid disease could not have been detected at the time of initial recruitment of the petitioner nor has it been said that the injury could be aggravated during the course of military service. In face of this, it shall be presumed that disease was incurred by petitioner during the course of military service.

I fortify my view with the Division Bench Judgment of this Court dated 30-7-2007 passed in LPA(SW) No. 28/2007 reported as 2008(1) SLJ 1. In this judgment, the court held as under:

**“ Army Act and Rules; Service Law-
Pension : Claim for disability pension:**

An army personnel invalidated out of service on medical grounds as he suffered from “ SCHIZHOPHERNIA” disability pension denied to him on the ground that disability suffered by such personnel was not attributable to army service – held , if there is no mention regarding a disease or disablement at the time of entry of any army personnel into service then the disability on account of which the concerned army personnel is boarded out of service would be deemed to have occurred due to hazards of army service and the claim for disability pension cannot be rejected.

Disability pension: army personnel invalidated out from army service on the ground that he suffers from “ SCHIZHOPHERNIA”: Denial of pension on the ground that such disease is neither attributable nor aggravated by military service to be attributed to the stress and strains of army service.”

There is another aspect of the matter also. Under Rule 14 of the Entitlement Rules 1982, certain conditions are required to be satisfied before the disease can be said to be attributable to military service. For facility of reference, Rule-14 of the aforementioned rules is quoted below:

“ Rule-14: In respect of disease, the following Rules will be observed:

- a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:
 - i) That the disease has arisen during the period of military service; and
 - ii) That the disease has been caused by the conditions of employment in military service.
- b) If the medical authority holds , for reasons to be stated , that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service . In case where it is established that the conditions of military service did not contribute to the onset

or adversely affect the cause of disease entitlement for casualty pensionary award will not be conceded, even if the disease has arisen during service.

c) 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.

d) In case of congenital, hereditary, degenerative and constitutional diseases, which are detected after the individual has joined service, entitlement to disability pension shall not be conceded, unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service.”

The import of the aforementioned rules indicates that the conditions mentioned in sub clause (a) (i) and (ii) be complied with. By a reasoned order, the authority is required to mention that such disease could not have been detected

prior to acceptance of service. Where the disease is congenital, hereditary, degenerative and constitutional, entitlement to disability pension shall not be conceded, unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service. However, if casual connection is shown in respect of such disease as having been incurred during military service then it can be said that the disease has been incurred during military service. Applying this context to the present case, it will be seen that the injury incurred by the petitioner has not been mentioned to congenital, hereditary, degenerative and constitutional. Therefore, it can safely be stated that the respondents have not given any reason that the injury suffered by the petitioner could not be detected at the time of his initial recruitment. On this count also, petitioner is entitled to receive disability pension.

I, therefore, allow this writ petition and grant disability pension to the petitioner w.e.f. he has been discharged from

service till date. Let this exercise be completed by the respondents within a period of four months from the date copy of this order is received by them. In case the amount due is not paid to the petitioner during the stipulated period, then the petitioner is also entitled to receive interest at the rate of 7% from the date the amount has become due to him.

(Sunil Hali)

Judge

Jammu: 31-7-2009.
RSB, Secy.