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HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No.1606/ 2006.

Date of Decision: 17-11-2009

Ex-Sep Sanjeet Kumar Vs Union of India and others
Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For the Petitioner(s) : MrRakesh Sharma Advocate
For the Respondent(s) : Mr. V.K. Magoo, ASGI

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| i) | Whether approved for reporting in Press/Journal/Media | : Yes/No |
| ii) | Whether to be reported in Digest/Journal | : Yes/No |

The petitioner, Sanjeet Kumar, was enrolled in the Army on November 17, 1986. During the course of his employment, he was found to have suffered disability of "RHEGMATO GENOUS RETINAL DETACHMENT (RT) EYE" for which he was downgraded to Low Medical Category CEE (Temporary), which on review was up-graded to Medical Category BEE (Permanent) by a Medical Board, held at Command Hospital, Western Command. It was later in October, 1998, that he was found by the Medical Board, held at Military Hospital, Ahmedabad, a case of "UNSPECIFIED PSYCHOSIS". He, however, continued to remain in Low Medical Category CEE (Temporary) from April, 1999. The Competent Authority, thereafter approved the petitioner's discharge from service w.e.f. July 31, 2001. Petitioner's request to serve the Army till completion of his Fifteen Years of Service, was later accepted, cancelling his Discharge. The Medical Board had assessed

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petitioner's over all disability at 35% i.e., "RT EYE RETINAL DETACHMENT (OPTD) 361" AND UNSPECIFIED PSYOHOSIS-298" at 15% and 20% respectively.

The petitioner was, there-after invalidated out, but without grant of the Disability Pension.

He has filed this Writ Petition, seeking quashing of the Principal, CDA (Pension) Allahabad's Communication No. G-3/67/03/1-2002 dated 3-4-2002 rejecting his case for grant of Disability Pension, besides seeking a Command to the respondents to consider, sanction, release and pay him the Disability Pension from the date of his discharge, along with arrears. Besides, the Disability Pension, he claims capitalized value of commuted pension too.

The case set up by the petitioner in the Writ Petition, is that he suffered 'UN-SPECIFIED PSYCHOSIS' because of the 'Stress and Strain' of the Army Service, and was thus entitled to Disability Pension, under Regulation 173 of the Pension Regulations, read with Rule 7 (b) of the Entitlement Rules.

The respondents' contest the petitioner's claim to Disability Pension, on the ground that the 'UN-SPECIFIED PSYCHOSIS', from which the petitioner suffered, was neither attributable to nor aggravated by the Military Service, and he was not thus entitled to the grant of Disability Pension under the Pension Regulations.

To support their case, the respondents have placed on records, the copies of the Medical Board proceedings, held from time to time, in respect of the petitioner, besides the communications, addressed by the Officer In-charge, Records intimating the petitioner the rejection of his Disability Pension case, and a copy of the Entitlement Rules.

The question that falls for determination, in this Writ

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Petition, is as to whether or not the disability for which the petitioner was invalidated out, was attributable to and aggravated by the Military Service.

Perusal of the opinion of the Medical Board, held in respect of the petitioner on April, 10, 2001 indicates that the petitioner's disability did not exist at the time of his entry into Army Service and that the disabilities had occurred due to 'Stress and Strain' of the Military Service.

The respondents have not placed any document on records, on the basis whereof, it may be said that the disability suffered by the petitioner was neither attributable to nor aggravated by the Military Service.

According to the Classification of Diseases, indicated in Annexure-III to Appendix-II of the Entitlement Rules 'PSYCHOSIS', is indicated as one of the diseases, affected by 'Stress and Strain'.

The stand taken by the respondents, in their reply to the Writ Petition, is, therefore, not supported by the material, which they have placed on the records.

The material placed by the respondents, on the other hand, substantiates the case set up by the petitioner in his Writ Petition that he had suffered disability because of the 'Stress and Strain' of the Army Service, for which he was invalidated out.

In view of the above, it is thus apparent that the petitioner has been denied Disability Pension, without any cause, compelling him to approach this Court for redressal of his grievance. Respondents, are therefore, additionally liable to compensate the petitioner, for the delay, which has occasioned because of the unwarranted rejection of his case for grant of Disability Pension, for no reasons at all.

In the absence of any opinion of the Medical Board,

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supported by reasons, that the disability suffered by the petitioner, during the course of his service, was neither attributed to nor aggravated by the Military Service, the petitioner could not be denied grant of Disability Pension and other service benefits to which he may be entitled to under the Rules.

Respondent No.2's Communications impugned in the Writ Petition, denying Disability Pension to the petitioner are thus arbitrary and illegal. These are, therefore, required to be quashed commanding the respondents to consider petitioner's case for award of Disability Pension in accordance with the rules, along with arrears.

This Writ Petition, therefore, succeeds and is, accordingly, allowed with costs quantified at Rs 20,000/-. By a Writ of Certiorari, Principal CDA (Pension) Allahabad's Communication No. G-3/67/03/1-2002 dated 3-4-2002 and Officer-In-Charge Records Communication No. Pen/D.10370/3988289/16 of April 22, 2002, are, accordingly, quashed, And a Command issued to the respondents to consider the petitioner's case for grant of Disability Pension under Rules along with arrears accrued thereon, within a period of two months. Petitioner's case for grant of commuted Pension shall also be considered by the respondents under rules and appropriate orders passed thereon within the aforementioned period.

**(J.P. SINGH)
JUDGE**

JAMMU
November 17, 2009.
Maini Secy.