IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

L.P.A. No. 26 of 2004.

Reserved on: 21.7.2009.

Decided on:31.7.2009.

Union of India and others. … Appellants.

Versus

Shri Dharamvir Singh.

… Respondent.

Coram:
Hon'ble Mr. Justice Jagdish Bhalla, Chief Justice.
Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the appellants	**:**	**Mr. Sandeep Sharma, Assistant Solicitor General of India.**
For the Respondent	**:**	**Mr. Lokender Thakur, Advocate.**

This Letters Patent Appeal is directed against the judgment of learned Single Judge rendered in C.W.P. No. 660/2000 dated 20.5.2004.

Brief facts necessary for the adjudication of this Letters Patent Appeal are that respondent-Shri Dharamvir Singh enrolled in the Army on 15.6.1985 was discharged on 28.2.1994. In the meantime, the respondent had rendered eight years and 250 days service in the Army. The Release Medical Board at 166 Military Hospital put the respondent in Low Medical Category (CEE) permanently with effect from 26.6.1993 for two years. The Board found the respondent suffering from "GENERALISED SEIZORE". The Re-survey Medical Board had considered the individual

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[1] *Whether reporters of the local papers may be allowed to see the judgment?Yes.*

disability neither attributable to nor aggravated by military service. The disability was assessed 20% for two years. His case for disability pension was rejected by the competent authority on 21.11.1995. The respondent was advised to file an appeal. He has not chosen to do so. However, the respondent approached this Court seeking direction to the Union of India for the release of disability pension. The learned Single Judge allowed the writ petition on 20.5.2004.

Mr. Sandeep Sharma has strenuously argued that the judgment rendered by the learned Single Judge is not sustainable. He then argued that the disease 'generalised seizore' was constitutional in nature and the same has not been found by the Re-survey Medical Board attributable or aggravated by military service. Mr. Sandeep Sharma lastly contended that the learned Single Judge has not taken into consideration the relevant law while allowing the petition.

Mr. Lokender Thakur appearing for respondent has supported the judgment.

We have gone through the judgment of the learned Single Judge and pleadings carefully.

The respondent was discharged from the military after being placed in Low Medical Category (CEE). The Re-survey Medical Board had opined the disability of the respondent neither attributable nor aggravated by military service. He was found suffering from 'generalised seizore'. The learned Single Judge has purportedly referred to paragraph 7 (b) of appendix (II) as referred to in Regulations 48, 173 and 185 while coming to the conclusion

that the respondent was not suffering from the disease on account of which he was invalidated out of the service at the time of his initial recruitment in the Indian Army. However, the learned Single Judge has omitted to take note of paragraph 7 (c) of appendix (II) as referred to in Regulations 48, 173 and 185 of the Pension Regulations for the Army, 1961 (Part-I).

The legal position raised in this Letters Patent Appeal is no more res integra in view of law laid down by their Lordships of the Hon'ble Supreme Court in ***Union of India & Ors. Versus Keshar Singh, 2007 (4) SLR 100.*** Their Lordships of the Hon'ble Supreme Court were also seized of the matter wherein the Medical Board had given a clear opinion that the illness was not attributable to military service. In this case also the soldier has developed schizophrenia. Their Lordships of the Hon'ble Supreme court have held as under:

> ***"In support of the appeal learned Additional Solicitor General submitted that both learned Single Judge and the Division Bench have lost sight of para 7(c). Both 7(b) and 7(c) have to be read together. They read as follows:-***
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> > ***"7 (b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.***

> ***7(c) If a disease is accepted 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."***

A bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. An exception, however, is carved out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, clause (c) of Rule 7 makes the position clear that if a disease is accepted 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 are due to the circumstances of duty in military service. There is no material placed by the respondent in this regard.

In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment

already made to the respondent by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs."

The disease developed by the petitioner i.e. 'generalise seizore' is constitutional in nature and the Re-survey Medical Board had specifically opined, as noticed above, that the disability was neither attributable nor aggravated by the military service. The opinion of the Re-survey Medical Board has to be given primacy.

Accordingly, the learned Single Judge has erred in law by allowing the writ petition only on the basis of plain reading of paragraph 7 (b) of Appendix (II) as referred to in Regulations 48, 173 and 185 of the Pension Regulations for the Army, 1961 (Part-I). He has omitted to see clause 7 (c) of Appendix (II) of the Pension Regulations for the Army, 1961 (Part-I).

Consequently, in view of the observations made hereinabove, the Letters Patent Appeal is allowed. The judgment of the learned Single Judge is set aside. No costs.

(Jagdish Bhalla), C.J.

(Rajiv Sharma), J.

July 31, 2009.
(cr)