HIGH COURT OF JAMMU AND KASHMIRAT
JAMMU
SWP NO. 2639/01

Brij Lal Vs. Union of India and Others.

Coram :

Hon'ble Mr. Justice Gh. Hasnain Massodi, Judge

Appearing Counsel:

For the Petitioner (s) : Mrs. Surinder Kour, Adv.
For the Respondent(s) : Mr. Tashi Rabstan, CGSC

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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

Regulation 173 of the Pension Regulations of the Army, 1961 lays primary conditions for the grant of disability pension to an individual invalided out of service on account of medical disability. Regulation 173 reads as under :

> " 173. 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 in non- battle casualty and is assessed at 20 percent or over.
>
> The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

Petitioner joined the Army Service as Rifleman on 18-4-1988, was allotted No. 9088903 and sent for training at JAK LI Centre, Srinagar. Once the petitioner completed the training, he was posted in 13th JAK LI, Jalandhar . Petitioner claims to have performed his duties efficiently and honestly to the entire satisfaction of his superiors. The petitioner was boarded out from the Army Service on medical grounds on 29-1-1990. The Medical Board that examined the petitioner, found him suffering from " PARTIAL G 6 PD DEFICNECY – 281." and the disability was assessed at 60% for life. The Medical Board further opined that the disability from which the

petitioner was suffering, was neither attributable to nor aggravated by military service, and was not connected with service being an inherited genetic disorder. The competent authority accordingly, acting upon the opinion of the Medical Board, rejected petitioner's prayer for grant of disability pension in terms of Regulation 173. The repeated efforts of the petitioner to persuade the respondents to sanction disability pension in his favour also did not bear any fruits. The petitioner was thus, left with no other option but to approach this Court through the medium of Writ Petition, registered as SWP No. 644/2001. This court vide order dated 9-4-2001 disposed of aforesaid writ petition with a direction to the respondents to consider the case of the petitioner and pass a speaking order. The respondents in compliance to the direction of this court, passed a speaking order on 31-8- 2001(Annexure-E).

The petitioner aggrieved of the order dated 31-8-2001, has approached this court with fresh writ petition to set right his grievance. The petitioner after detailing

the facts and events relevant to the controversy, has sought the following relief:

i) To quash order No. 9088903/LC/NE-Coord dated 31 Aug 2001 issued by Senior Record Officer JAL LI Record Office by which the respondents have rejected the case of petitioner for grant of disability pension and to quash Order No.7(380)/91/D/Pen-A) dated 21 Oct 1991 isisued by Ministry of Defence by which appeal filed by petitioner has been rejected for grant of disability pension and also to quash order of Chief Controller of Defence Account(Pen) Allahabad(order has not been served on the petitioner) by which claim of petitioner for grant of disability pension has been rejected by Chief Controller of Defence Account by issuance of writ of certiorari;

ii) to consider the case of petitioner for grant of disability pension and to release the disability pension from the date the petitioner was boarded out from service on medical grounds and to pay all pension benefits and also to pay arrears to the petitioner and

interest from the date the pension becomes due to the petitioner by issuance of writ of mandamus

iii) to release the amount of gratuity, AFPP fund, GP insurance and arrears of pay and allowances alongwith interest @ 18% from the date it becomes due to the petitioner and the date the petitioner has been discharged from service on medical grounds sands also to pay compensation for wrongfully withholding the amount of pension without any reasonable cause and reason by issuance of writ of mandamus."

The respondents in their objections, treated as counter at the request of counsel for the respondents, have resisted the writ petition inter alia on the ground that the petition was barred by delay and latches and that the petitioner discharged from the service w.e.f. 29-1-1990, had approached the court after an inordinate delay of more than 10 years. The respondents maintained that the disability detected was not the one, attributable to military service or aggravated by the military service.

The respondents made an effort to wriggle out of their obligation to pay the disability pension to the petitioner on the ground that the disability because of which the petitioner was invalided out of service, was constitutional in nature. It is pleaded that having regard to the nature of disability suffered by the petitioner, it could not be picked up by the Medical Board at the time of recruitment of the petitioner.

Heard.

The controversy involved makes necessary to have a closer look at Regulation 173 as also Appendix II and its annexures.

Regulation 173 lays down the following three pre-requisites for grant of disability pension to an individual invalided out of military service on account of disability:

i) that the disability must be attributable to the military service.

ii) that the disability must be aggravated by the military service.

iii) that the disability must not be less than 20%.

The first two pre- requisites/conditions are in alternative and even where one of the two conditions/ pre-requisites are satisfied, disability pension to an individual discharged from the service on account of disability, is to be sanctioned. Paragraphs -5 of Appendix –II enumerates presumption that the authority who has to deal with the evaluation of disability, is required to draw presumptions as detailed in the aforesaid paragraph are as under :

a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Paragraph -6 of Appendix –II deals with the situations where disablement is to be accepted due to military service. Such presumption in terms of Paragraph- 6 is to be drawn if the competent medical authority certifies that :

a) the disablement is due to a wound, injury or disease which:
    i) is attributable to military service, or
    ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/ hastening of the onset of a disability.
b) the death was due to or hastened by :
    i) a wound ,injury or disease which was attributable to military service; or
    ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service."

Paragraph -8 of Appendix –II provides that attributability/ aggravation of the disability shall be considered if casual connection between death/disablement and military service is certified by an appropriate medical authority. Paragraph-14 of Appendix- II is also of equal importance and needs to be noticed . Para- 14 reads as under:

" **DISEASES :**

_" 14. In respect of diseases, the following rule will be observed:

a) 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 courses of the disease, will fall for acceptance on the basis of aggravation.

b) A disease which had 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.

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."

It is to be noted that the petitioner at the time of joining service was, as per his claim, enrolled in AYE category implying thereby that the petitioner was found by the Medical Board to be having good health and not suffered from any disability including the one, which later discovered by the Medical Board. Rule 14(b) of Appendix –II clears that presumption is to be drawn in his favour that disability not having been detected at the time of his entry in service/acceptance for military service, has arisen in service. Such presumption is to be displayed only if the medical opinion holds, that reasons to be stated , that the disease could not have been detected on medial examination prior to acceptance for service.

Having noticed the rule position, it is next to be seen, whether the disability detected, qualifies the petitioner for the disability pension. The disability detected by the Medical Board has been assessed at 60%

for life. Petitioner's case thus, satisfies the 3rd requirement for grant of disability pension in terms of Regulation 173. The only condition that is required to be satisfied, relates to disability in question being attributable to the military service or aggravated by military service. The competent authority while making the speaking order impugned herein, has referred to " INVALIDING MEDICAL BOARD PROCEEDINGS" and observed that as per the opinion of duly constituted Medical Board, the petitioner was found suffered from " PARTIAL G 6 PD DEFFICIENCY (281)" and disability was assessed at 60% for life and that the disability was neither attributable to nor aggravated by the military service and was also not connected with the service being inherited genetic disorder. The competent authority also referred to law laid down in Mohinder Singh Vs. Union of India , wherein the findings of the Medical Board have been held to command and deserve respect.

It is argued by the learned counsel for the petitioner that in terms of Rule 14(b) of Appendix II, the

disability detected by the Medical Board would ordinarily be deemed to have been arisen in service , if no notice of it was made at the time of petitioner's induction in service, unless the Medical Board holds opinion for the reasons to be stated, that the disease could not have been detected on medical examination during service. It is urged that once the disability has been detected during service and not at the time of acceptance of petitioner for military service and the Medical Board had not given any opinion that the disability for the reasons to be recorded, could not have been detected at the time of acceptance of petitioner, his claim for disability pension was required to be considered. Learned counsel for the petitioner has sought support from the law laid down in case titled Union of India Vs. Sepoy Suram Singh reported as 2008(3) JKJ 577(HC).

The petitioner, as is evident from the record, has been found to be suffered from " PARTIAL G 6 PD DEFFICIENCY (281)" The disability detected on going through medical literature means ' deficiency of

Glucose -6 – phosphate dehydrogenase in blood. The deficiency is genetic in character and is genetic disorder that occurs most often in males. This deficiency mainly affects red blood cells, which carry oxygen from the lungs to tissues through out the body. In affected individuals, the deficiency in Glucose -6 – phosphate dehydrogenase causes red blood cells to break down prematurely . This destruction of red blood cells is called hemolysis.

The respondents in paragraph -2 and paragraph 7(2) have made explicit averments that the petitioner like other aspirants for military service, was examined by the Medical Officer and not by a Board of Doctors and that having regard to the nature of disability detected by the Medical Board and the stage of examination of Medical Officer, it was not possible to detect that disability at the time of acceptance of petitioner in Military Service . It is insisted that constitutional disease or disorder can be detected only at the stage when its symptoms are surfaced and the victim is subjected to extensive medical investigation by specialized doctors.

The Medical Board by referring to the disability being inherited genetic disorder, pointed to the nature of disability detected by the Medical Board and supports the averments made in the counter.

It is settled law that the opinion of the Medical Board regarding the cause of disease and whether it was attributable to military service or aggravated by it, is not to be ignored or substituted by the opinion of the court. It has been consistently impressed upon by the Hon'ble Supreme Court that the opinion of the Medical Board to be respected and given primacy unless the opinion is based on wrong premise or is not otherwise sustainable. The case law relied upon by the counsel for the petitioner to buttress her arguments, does not extend any help to the petitioner's case as much as the facts of referred case are distinguishable from the facts of the present case. In the referred case, the petitioner was found to be suffered from unspecified psychosis. The court having regard to the probability of the disease having been contacted due to the reasons like stress and strain being a psychological disorder, was attributable to the military service.

Petitioner's case admittedly does not attract Rules 5 and 6 of Appendix –II.

For the reasons discussed above, petitioner's case does not fall within the ambit of Regulation 173 of the Army Pension Regulations, 1961 and the petition is bereft of any merit, which is accordingly, dismissed.

(Gh. Hasnain Massodi)
Judge

Jammu:
RSB,Secy.
01.01.2010.