

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW no. 119/2009
CMA no. 163/2009

Date of order: 29.11.2012

Union of India and ors. v Shakuntala Rani

Coram:

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge**

Appearing counsel:

For the appellant(s) : Mr. P. S. Chandel, CGSC
For the respondent(s) : Mrs. Surinder Kour, Sr. Advocate with
Mr. Rajiv Gorkha, Advocate.

- 1) Whether approved for reporting : Yes/No
in Press/Media
- 2) Whether to be reported in : Yes/No
Digest/Journal

M. M. Kumar, CJ

1. The short issue raised in this appeal filed by Union of India and the Chief of Army Staff alongwith other Officers is whether Hysterical Neurosis is attributable to military service so as to grant the benefit of disability pension to the husband of the writ petitioner-respondent. According to the appellant the non detection of the disease at the time of induction of the husband of the writ petitioner-respondent in service would not constitute a basis to conclude that the disease was attributable to military service. According to the appellant, it is a 'constitutional disease' and the instruments which are required to detect such a disease at the time of induction were not

available, therefore, it could not be detected at that time. A perusal of the opinion of the Medical Board is reflected in Annexure-VIII. The first item of the proforma is devoted to the information whether the disability existed before entering service and the second item is devoted to whether it was attributable to service or not. It would thus be profitable to read the item Nos. 1 and 2 of the proforma which reads as under:-

CONFIDENTIAL
PARA III
OPINION OF THE MEDICAL BOARD
(Not to be communicated to the individual)

Note: Clear and decisive answers should be filled in by the Board. Expressions such as 'might', 'may', 'probably', should be avoided.

1. *Did the disability/ies exist before entering service* **No**
2. (a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether:
 - (i) *it is attributable to service during peace or under filed service conditions; or*
 - (ii) *it has been aggravated thereby and remains so; or*
 - (iii) *it is not connected with service.*

The Board should state fully the reasons in regard to each disability on which its opinion is based.

Disability	A	B	C
HYSTERICAL NEUROSIS IMB 300 (b) V.67	No	No	Yes

- (b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability.

NA

- (c) In respect of each disability shown as aggravated under B, the Board should state fully:

- (i) The specific condition and period in service which aggravated the disability.

NA

- (ii) Whether the effects of such aggravation still persist.

NA

- (iii) If the answer to (ii) is in the affirmative, whether effect of aggravation will persist for a material period.

NA

(d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.

Unrelated to the service conditions.”

2. A perusal of the opinion of the Medical Board as extracted above, would show that the disability did not exist before entering service and at the same time, it has been opined that the disease-Hysterical Neurosis is not attributable to military service. It is not possible to accept the contradictory opinion given by the Board particularly when the request of the husband of the writ petitioner-respondent for reconvened Medical Board has been rejected. Accordingly, we find that the learned Single Judge has rightly concluded that the appellant cannot escape from its liability to pay disability pension. The learned Single Judge has placed reliance on the Division Bench judgment of this Court in ***Darshana Devi v. Union of India & ors. 2008 (1) SLJ 1*** and also noticed that the husband of the writ petitioner-respondent was enrolled on 26.09.1974 and was boarded out of service as invalid in the month of June, 1982 which is more than 8 years. We find that the judgments which say that the opinion of the Medical Board should be given its due weightage would not apply to the facts of the present case when the Medical Board itself has expressed contradictory

opinions and the prayer of the husband of the writ petitioner-respondent for reconvened Medical Board has been rejected. The view expressed by the learned Single Judge is discernible from the following para:-

“The stand of the respondents as notice above is that the petitioner’s husband might have been suffering from the aforesaid disease at the time of his enrolment as the same could not be deducted due to non holding of a general medical examination as also non conducting specialized tests for deduction of internal diseases. But in this regard it would be apt to mention that the petitioner’s husband remained in active service for about eight years of his enrolment and there was no sights of the disease aforementioned and it was only in the month of June, 1982, he was deducted as a case of Hysterical Neurosis and remained under treatment in different army hospitals. Therefore, it cannot be said that the disease suffered by the petitioner’s husband could not be detected for about eight years of his active service or that he was suffering from the said malady at the time of his enrolment. Thus, the stand taken by the respondents in this regard that the petitioner’s husband might have been suffering from this disease at the time of his enrolment cannot be accepted. Therefore, the aforesaid question as to whether the disability suffered by a army personnel which leads to his invalidation out of service would be a disability attributable to military service when no mention of it is made at the time of entry into service has to be answered in affirmative. This aspect of the matter was considered by a Division Bench of this Court in the case reported as Darshana Devi vs. Union of India & ors. 2008 (1) SLJ1. After taking notice of the various judicial precedents on subject, in para 8 of the judgment in the aforementioned case, it was held as under:-

“8. Therefore, from the judicial precedents referred to above, it can safely be held that if there is no mention regarding disease or disablement at the time of entry of an 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.”

In view of the above, this petition is allowed. The malady of Hysterical Neurosis from which the petitioner's husband suffered after about eight years of his active service and which led to his discharge from service is held to be attributable to army service. The petitioner's husband accordingly is found entitled to disability pension as per army Pension Regulation 173 as the said disability has been assessed at 20%. The respondents shall release the disability pension in favour of the petitioner's husband within a period of two months from the date of this order is made available to them by the petitioner. The petitioner's husband is also held entitled to arrears of the said pension three years prior to the filing of the present petition. The said arrears shall be released within the period aforementioned. In case the disability pension alongwith the arrears is not released as indicated above then the petitioner's husband shall be entitled to interest @9% per annum on the arrears and this interest shall be payable by the person on whose account the delay occurs."

3. The stand of the appellant in the written statement is that the husband of the writ petitioner-respondent might have been suffering from Hysterical Neurosis IMB 300 (b) v. 67 whereas the first instruction given to the Medical Board in the proforma reproduced in the preceding para would show that expressions such as 'might', 'may' or 'probably' should be avoided. The Board was required to give clear and decisive answers avoiding the expressions like might, may or probably. Any ambiguity in the opinion of the Medical Board is required to be resolved in favour of the disabled like husband of the writ petitioner-respondent particularly when his request for reconvened Medical Board has been rejected.

4. For all the reasons aforesaid, we do not find any worthwhile ground to admit the appeal. The view taken by the learned Single Judge, in any case, is based on the Division Bench judgment of this Court which continues to hold the view. The appellant has not been able to cite any judgment to show that the aforesaid view stand overruled.

5. Accordingly, the appeal fails and the same is dismissed.

(Mohamamid Yaqoob Mir)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
29.11.2012
Parshant