IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-13203-2022
Reserved on: 16.09.2024
Pronounced on: 30.09.2024

Kala Singh .....Petitioner

Versus

Union of India and Others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Sandeep Bansal, Advocate
for the petitioner.

Mr. Rohit Verma, Senior Panel Counsel,
for the respondent – UOI.

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside order dated 09.05.2022 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, wherebys the the petitioner's claim for grant of disability pension has been rejected.

Factual Background

2. The applicant was enrolled in the Indian Army on 06.07.2001 and became invalided from service on 15.12.2001 after rendering 05 months and 09 days service. The supra occurred, under Army Rule 13 (3) item (iv) being medical category for the disabilities “Ptosis RT Eye and Mixed Astigmatism”. The supra disability of the applicant became regarded as neither attributable to nor being

aggravated by military service. Moreover, the degree of the disability was assessed as less than 20 % (06-10%) for each disability and composite assessment of both disabilities were assessed as less than 20% (11-14%) for life. Accordingly, the claim of the applicant was processed to PCDA (P) Allahabad for adjudication, who however rejected the same on the ground, that the disabilities in question are neither attributable to nor aggravated by military service but with an advice to prefer an appeal against the decision of the PCDA (P) Allahabad, if so desired, by 17.08.2003. Thereafter, the applicant preferred the first appeal before the authority concerned in May 2003. The same was also rejected by the authority concerned.

3. Feeling aggrieved, the petitioner filed O.A. 13 of 2021 before the learned Armed Forces Tribunal concerned, challenging the afore rejection order. The said O.A., became disposed of vide order dated 09.05.2022. The operative part of the order dated 09.05.2022 is extracted hereinafter.

> *" The disease, Ptosis RT Eye and Mixed Astigmatism are the eye diseased (drooping eyelid and imperfection in the eyes curvature) as per Release Medical Board. This disease existed prior to the entry of the applicant into service as per Release Medical Board. The physical examination test before entry into service conducted upon an individual is a preliminary screening test. The disease in question may escape the notice of the Doctor/official concerned and moreover, as per the Release Medical Board, the disease in question existed prior to entry into service, therefore, the same is not attributable to military*

service. The contention of the learned counsel for the applicant that the matter is covered by the principles laid down by the Apex Court in Sukhwinder Singh's case (supra) has no force because for the application for that principle the disease must be attributable to military service."

4. Feeling aggrieved from the aforesaid dis-affirmative order as passed upon the O.A. (supra) by the learned Armed Forces Tribunal concerned, the petitioner has filed thereagainst the instant writ petition before this Court.

5. Before proceeding to make an effective adjudication upon the present writ petition, it is necessary to dwell upon the Guide to Medical Officers (2002) (Amended) 2008. The relevant portion of the said speaks about the necessity of existence of a causal connection inter-se the respective entailments of disability or death, upon the defence personnel, rather with the service rendered by him, as a defence personnel. The said relevant portion thereof, becomes extracted hereinafter.

" Death or disability may be due to wounds, injury or disease. Evidence of causal connection or otherwise, in cases of disease, can be obtained in various ways. For instance, the man may have admitted when he was enrolled, that he suffered from the disease previously; or in statements made before or on admission to hospital, he may have explained when he began feeling unwell or out of sorts, adding how his time shortly prior to that was spent, thereby giving an indication or clue to the proximate time and circumstances of possible source of

exposure. It may be that the consensus of medical opinion is against the acceptance of the particular disability as due to service. That will constitute evidence that it is not attributable to service, but then the disease may have been worsened by service and therefore aggravated by it. ...

6. Moreover, in the further therein paragraph, it is spoken that *where the available evidence is not conclusive, the pros and cons should be carefully weighed with a view to decide whether, on the whole, the preponderence of probability as opposite to balance of probabilities against the claimant is such as to exclude all reasonable doubt.*

7. Furthermore, the further thereins speakings are also extracted hereinafter, the apt portions whereofs become underlined.

Chapter – II

Entitlement : General Principles

1. Although the certificate of a properly constituted medical authority vis-à-vis the invaliding disability, or death, forms the basis of compensation payable by the government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. ***It may require also the consideration of other circumstances e.g. service conditions, pre-and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and discipline. Accordingly, Medical Boards should examine cases in the light of the aetiology of the particular disease and after considering all the relevant particulars of a case,***

record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the rules. In expressing their opinion medical officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority.

2. xxxxx

3. ***If it is established on evidence that the disease was brought about by service conditions, then attributability is clearly Indicated. If on the other hand, a disease not attributable to service--having been of pre-enrolment origin or having its origin in other than service conditions, has been influenced in its subsequent course by conditions of service, the claim would stand for acceptance on the basis of aggravation.***

Evidence for Entitlement Purposes

4. Opinion on entitlement must be impartially given in accordance with the evidence, the benefit of any reasonable doubt being given to the claimant*.*

7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise.

8. *The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition*

on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition on entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

8. Now, from the supra extracted underlined relevant portions of Guide to Medical Officers (2002) (Amended) 2008, it has to be determined whether the declaration made by the Medical Board, inasmuch as, the disease "*Refractory Error Since Childhood",* rather being a congenital disease, thus requires the same becoming accepted.

9. Initially for determining the above, an allusion is required to be made to Annexure A-1, which became prepared at the time of the present petitioner becoming enrolled in military service, whereins, candid speakings occur, that at that time, the petitioner being declared to be fit and/or being declared to be disease free and/or the said disease remaining undetected.

10. Though in view of the supra, the counsel for the respondent, thus may not *prima facie,* well contend that the declaration

made by the Medical Board subsequently on 12.10.2001 (Annexure A-2), wherebys the said disease was declared to be congenital in nature thus being a well made declaration nor also *prima facie*, the counsel for the respondent may also not further well contend, that as such the denial of disability pension to the present petitioner, rather was apt, thus on the purported premise qua the disease (supra) becoming neither aggravated by nor being attributable to military service.

11. Be that as it may, though the entailment of the said disease on a defence personnel, may be post his enrolment as a member of the combatant defence establishment. Moreover though at the stage of happening qua enrolment of the defence personnel either in the navy, army or the air force, thus the medical examination, as then made upon him, rather may not unravel the disease which may become subsequently detected. Moreover, though thereby *prima facie*, the subsequent entailment of a disease upon any personnel serving in any of the wings of the defence establishment, may *prima facie*, thus become construable to arise from rendition of military service and/or the eruption thereof, may become construable to become aggravated by or being attributable to military service.

12. In other words, the subsequent eruption besides detection of a disease, may be an ill event which may thus arise, as the same may be, earlier was in a state of dormancy, especially at the time of the apposite enlistment taking place. Resultantly, when then the apposite disease may have remained undiscoverable, reiteratedly at the stage of

the apposite preliminary medical examinations becoming made upon the defence personnel. In consequence, if the eruption of any disease takes place but post the enrolment of the defence personnel concerned, and, which may require the same being declared to be congenital, yet the said declaration requires that a deep incisive research becomes made by the medical board relating to :

a) the advent of the disease;

b) the duration thereof ;

c) the family history and his pre service history;

13. In other words, the genetic origin of the disease, thus has to be imperatively discovered through employments of the State of Art medical techniques by the members of the Medical Board, rather both at the time of the apposite enlistment taking place besides subsequently also. If the said is done and ultimately a well reasoned decision is recorded vis-à-vis the disease, which befell any defence personnel, but post his enrolment, thus being congenital. Resultantly the said made reasoned decision may render the relevant ill event, which befalls a defence personnel, to be construable to be neither attributable to nor becoming aggravated by military service. In sequel, therebys there would be a well denial of disability pension to the concerned.

14. Moreover, in case the entailment of the disease, occurs during the performance of service by the Army Personnel, thereupon but naturally, it may be a sequel of the defence personnel concerned, thus rendering service or the same being a sequel of his facing hostile

service conditions. Contrarily, its origin may be on account of factors other than service conditions. For instance, the said entailment may arise when the defence personnel concerned, thus evidently but for a prolonged duration of time, rather remaining away from rendering active military service or may be during his staying in a foreign land, and that too, without his becoming deployed there to render service as a combatant on behalf of the country.

15. Significantly, the above instances, wherebys, there may be a denial of disability pension to the present petitioner, when neither become averred nor become proven by the respondent, thus thereons there may not be any denial of disability pension to the present petitioner.

16. Be that as it may, a useful assistance for determining whether the befallment of any disease vis-à-vis any member of the defence personnel, but post his being enrolled in the army, despite at the initial stage, upon his becoming enlisted, as a member of the combatant defence establishment, rather the same remaining undetected, yet the apposite eruption thus post enlistment hence being construable to be either congenital or being construable to become aggravated or being attributable to military service, thus is acquired, from, the principles set forth in the judgment rendered by the Hon'ble Apex Court, in case titled as ***Dharamvir Singh Vs. Union of India***, reported in ***(2013) 7 SCC 316***. The relevant paragraphs of the said verdict are extracted hereinafter.

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from 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. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been 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. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during

service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

30. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

17. An incisive reading(s) of the above extracted principles, though pointedly declare, that when a disability becomes entailed upon any member of the combatant defence establishment, and which is to the extent of 20 % or over, thereupon, though any such disabled member is required to be invalided from the Army, but yet he is required to be assigned the benefit of disability pension.

18. Nonetheless, the assignment of disability pension to any member of the combatant defence establishment, who becomes entailed with a disability in a quantum of 20 % or more, but imperatively requires a declaration from the Medical Board, rather candidly pronouncing that the said attained disability being attributable to or becoming aggravated by military service. The said declaration becomes enjoined by the *"Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

19. Furthermore, though thereins a presumption is assigned vis-à-vis the sound physical and mental health of any member of the defence establishment concerned, especially when at the stage of his becoming enrolled, there is no note or record about his becoming beset

with any disease. Moreover, though thereins there is also a further presumption, that when any deterioration theretos, thus occurs subsequently, therebys the said happening of deterioration(s) or onsettings of any disease, rather is to be presumed to be a sequel of his rendering service as a member of the defence establishment. Imperatively, the onus for proving the non endowments qua benefits (supra) vis-à-vis the concerned, but is rested on the employer, and in case, the said onus remains un-discharged, thereupon, the claimant becomes entitled to receive disability pension. Moreover, all the facts and circumstances attendant to the rendition of service by the concerned, are to be closely scrutinized, thus for declaring whether the onset of any disease vis-à-vis the concerned, is a sequel qua renditions of military service and/or the same being aggravated by or being attributable to military service.

20. Be that as it may, thereins becomes also set forth a further principle(s) that yet there can be denial of disability pension to the concerned, but only upon :

a) At the time of acceptance of the concerned in military service, some notings becoming recorded by the Medical Board vis-a-vis his being beset with a disease which however, becomes concluded to be yet not rendering him unfit to become enlisted.

b) Any further deterioration thereofs, may also subsequently become concluded by the Medical Board, to

not arise from rendition of military service nor being attributable to military service, rather the same being a congenital disease.

21. Further, if the medical opinion holds that the disease could not have been detected on medical examination of the concerned being made, thus prior to his becoming enlisted in service, thereupons, the same will not be deemed to have arisen during service, yet in the situation (supra), the Medical Board is required to state the reasons for so concluding.

22. Moreover, it is also declared in supra, that it is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles".

23. Therefore, it has to be now determined whether in terms of the above principles, whether at the time of enlistment of the present petitioner in the Army, thus after a preliminary medical examination being made vis-a-vis his health, thus a note became recorded about some disease besetting him and/or whether some note became appended that the said disease was in a dormant stage. Moreover, it is also required to be determined, from the facts at hand, whether there is a causal nexus inter-se the eruption of the disease, and/or the onsettings thereofs, on to his person, thus post the enrollment of the present petitioner taking place, vis-a-vis the active renditions by him of military service, wherebys, this Court may conclude that the onset of the disease

but rather was a sequel of his rendering service in the Army and as such was attributable or became aggravated by his rendering military service.

24. In addition, it is also required to be gathered from the records, whether the Medical Board, did initially proceed to make a detailed incisive antecedental check, particularly appertaining to the advent of the disease, through employments of State of Art medical techniques, thus unveiling the block chain genetic connection, wherefroms, rather the disease became sourced. Moreover, if the said employment fails. Resultantly, therebys it may become concluded qua eruptions thereof, thus subsequent to the apposite enlistment taking place, rather was not congenital but owed its origin to rendition of military service besides it being attributable to or becoming aggravated by performance of military service. Contrarily, if the supra employed techniques at the stage of apposite enlistment taking place, thus by the Medical Board concerned, leads to a conclusion, that there are rather dormant incidences of any disease, but yet the said dormant disease not prohibiting the enlistment of any personnel in the army, navy or air force. Resultantly the subsequent active detection/eruption thereofs, during the course of rendition of military service, but would naturally lead to a well conclusion by the Medical Board, that its active eruption but became sourced from an effective causal genetic connection wherebys there would be denial of disability pension.

25. However, now in the said endeavour, this Court is required to be extracting the contents of the opinions, as became respectively

formed by the medical board, rather both at the time of his induction and also post his being enrolled in the Army Service. The relevant portions of the said opinions are extracted hereinafter.

Annexure A-1 (Preliminary medical examination)

9. Past Medical History : Specially of Fits : ***NIL***

11. Eyes

(a) Distance Vision without Glass

Right (6/12) Left (6/12)

27. Found Fit in Category.

Annexure A-2 (Post enrollment medical examination)

Illness, wound, injury –

'PROSIS RIGHT EYE' AND 'MIXED ASTIGATISM'

1. Did the disability/ies exist before entering service : Yes

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 field Service.

(ii) It has been aggravated thereby and remains so ; or

(iii) It is not connected with service.

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

Disability	***A***	***B***	***C***
PROSIS RIGHT EYE	*No*	*No*	*Yes*
MIXED ASTIGATISM	*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 cause the disability. ***NA for both disabilities****.*

c) In respect of each disability shown as aggravated under 'B' the Board should state fully.... ***NA for both disabilities****.*

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

"REFRECTORY ERROR SINCE CHILDHOOD"

26. A reading of the Annexure A-1, discloses that at the time of the apposite enlistment taking place rather no note became made in terms of the principles (supra) declared by the Hon'ble Apex Court in case titled as ***Dharamvir Singh Vs. Union of India (supra)*** by the Medical Board, that some disease which however, did not forbid the present petitioner, to become enlisted in the Army, did make its preliminary onsettings. If so, the declaration of law in judgment (supra) that therebys there is a presumption that the incurring of the said disease was a sequel of rendition of service, is required to be favourably endowed vis-a-vis the petitioner. Though the said presumption is rebuttable but the onus to lead evidence to rebut the said presumption became cast upon the respondents. However, the said cast evidence adducing discharging onus vis-a-vis the respondents, rather for cogently rebutting the said presumption, but naturally also did cast an onerous duty also upon the Medical Board, to engage itself in the endeavour of unearthing, through employments of the State of Art

block chain genetic causal connection technique(s), wherebys it may became unraveled that the onsetting of the disease onto the army personnel, became sourced from antecedental genetic family history. Moreover, therebys it was also required to be stated in the medical opinion, that the disease but for a well formed reason rather was a congenital disease and became neither aggravated by nor became attributable to military service.

27. However, a reading of Annexure A-2, discloses that it has been recorded in a stereo typed form and no reasons have been recorded to the extent (supra). Reiteratedly, since no evidence to rebut the presumption (supra) has been led by the respondents, therebys, this Court is constrained to give no weightage to the opinion of the medical board, as enclosed in Annexure A-2. Conspicuously, no credence can be assigned to the supra ill informed reason, besides therebys the onsetting of the disease cannot be said to be a sequel of antecedental genetic family history. Contrarily, it is required to be declared to arise from rendition of military service. In addition, it is required to be declared to be attributable or becoming aggravated by rendition of military service by the present petitioner.

Final Order of this Court.

28. In aftermath, this Court finds merit in the writ petition and with observations above, the same is allowed.

29. The impugned order (Annexure P-1) is quashed and set aside but with a direction to the respondents concerned, to process the

disability pension case of the petitioner in terms of the verdict rendered by the Hon'ble Apex Court in case titled as ***Sukhvinder Singh Vs. Union of India and Others***, reported in ***(2014) 14 SCC 364,*** whereins, in para No. 11, para whereof is extracted hereinafter, it has been expostulated that *whereever a member of the armed forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent.*

> *11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so.* ***Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent.*** *Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*

30. The above exercise may be done within a period of three months from today. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No