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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 46/2021 & C.M.No.188/2021

EX. RECT. RAJESH KUMAR

..... Petitioner

Through Mr.Randhir Singh Kalkal, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.D.S.Mahandru, Advocate.

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Date of Decision: 08th April, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 26th February, 2020 passed by the Armed Forces Tribunal – Principal Bench, New Delhi in OA No. 470/2015, whereby petitioner's claim for disability pension has been rejected. Petitioner also prays for a direction to the respondents to grant disability pension to the petitioner w.e.f. 26th June, 2013 @ 60% (rounding off 75%) along with interest @18% thereon. The relevant portion of the impugned order is reproduced hereinbelow:-

“6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 24.09.2012 and the disease had first started on 12.12.2012 i.e. within three months of joining the service. He was administered treatment at Base Hospital, Delhi Cantt. On admission in the Hospital the case history of the applicant was endorsed by Lt Col Siddharth Dixit,

Classified Specialist (Psy) as under:-

History of present illness. This recruit was apparently well about till last wk of Nov 12 while undergoing recruitment training at Raj Rif (wef 24 Sep 2012 till 12 Dec 12), He was noted to remain aloof, socially withdrawn and crying intermittently. He felt people around him are plotting against him and trying to harm him. He became anxious, fearful, and kept to himself. He was heard claiming "gaon walon nai jaal bichaya hai woh chalnai main rukawat dalate hain tab main theek say chal nahin paata." He was seen by his colleagues to muttering and gesticulating also. He has complained of hearing voices of person commenting in derogatory manner and threatening him (maar doonga bahar aa sonai nahin doonga). He was worried and tried intermittently. He neglected personal hygiene and food intake. Over another week he stopped attending to routine duties at training centre and remained awake at the night. Noticing his behavioural abnormalities he was admitted along with escorts for further management by psychiatrist at BHDC. He h/o fever head injury or substance abuse.

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Management Recommended. In view of genetic loading first degree relative, poor response to treatment modality and onset of psychotic breakdown during recruit phase of training he is unlikely to withstand stress and strain of soldiers life. Hence recommended to be invalided out of service.xxxxxxx

7. In the above scenario, we are of the option that since the disease has started in less than three months of his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Additionally, it is well known that mental disorders can escape detection at the time of enrolment hence benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. Since there is no casual connection between this disease and military service, hence we are in agreement with the opinion of the IMB that the disease is

NANA. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the foregoing and the fact that the disease manifested in less than three months, of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.”

2. Learned counsel for the petitioner states that the petitioner was not suffering from any disability at the time of enrollment and was found to be medically fit at that time by the medical board. He points out that the petitioner developed the disability during basic training and therefore, the petitioner is entitled to the disability pension. He emphasizes that the disease of the petitioner is either attributable to or aggravated due to stress and strain of military service as the Medical Board made no note of the disease at the time of enrolment. In support of his submission, he relies upon the judgment of the Supreme Court in ***Dharmavir Singh Vs. Union of India & Ors., (2013)7 SCC 316***, wherein it has been held as under:-

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

29.1 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).

29.2 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)].

29.3 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).

29.4 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)].

29.5 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)].

29.6 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

29.7 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."

3. Having heard the learned counsel for the petitioner, this Court finds that the petitioner was enrolled on 24th September, 2012 and as noted in the impugned order, he started developing symptoms attributable to the disease/disability within three months and had to be treated at Base Hospital, Delhi Cantt. The date of origin of the disability is noted as 12th December, 2012 in the medical board proceedings, which is annexed to the present

petition. The total period of service is only nine months as the petitioner was boarded out on 25th June, 2013.

4. Consequently, this Court is of the view that the Invaliding Medical Board [IMB] as well as the tribunal were correct in holding that the disability was neither attributable nor aggravated by military service as the time spent in service was too short to cause stress or strain that might lead to such a disability.

5. Further, this Court is also in agreement with the Tribunal that certain mental disorders might escape detection at the time of enrollment by the Medical Board. The Supreme Court in *Narsingh Yadav v. Union of India, (2019) 9 SCC 667* has held that there cannot be a mechanical application of the principle that “any disorder not mentioned at the time of enrollment is presumed to be attributed to or aggravated by military service”. Every case has to be examined and it has to be ascertained whether the duties assigned to the individual might have lead to the disorder. The Supreme Court while confirming the findings of the IMB in the said case, wherein the appellant had been in service for more than three years, held as under:-

“18. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.

19. The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of

posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

20. In the present case, Rule 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the report of the invaliding Medical Board.”

6. In view of the aforesaid as well as the report of the IMB, this Court is not inclined to interfere with the impugned order.
7. Consequently, the present petition is dismissed.

MANMOHAN, J

ASHA MENON, J

APRIL 08, 2021
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