Union Of India & Anr vs Rajbir Singh on 13 February, 2015

Equivalent citations: AIRONLINE 2015 SC 481

Author: T.S. Thakur

Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2904 OF 2011

Union of India & Anr. ...Appellants

Versus

Rajbir Singh ...Respondent

With

CIVIL APPEAL NO.2905 OF 2011
CIVIL APPEAL NO.3409 OF 2011
CIVIL APPEAL NO.5144 OF 2011
CIVIL APPEAL NO.2279 OF 2011
CIVIL APPEAL NO.1498 OF 2011
CIVIL APPEAL NO.5090 OF 2011
CIVIL APPEAL NO.5414 OF 2011
CIVIL APPEAL NO.5163 OF 2011
CIVIL APPEAL NO.5840 OF 2011
CIVIL APPEAL NO.7368 OF 2011
CIVIL APPEAL NO.7479 OF 2011
CIVIL APPEAL NO.7629 OF 2011
CIVIL APPEAL NO.5469 OF 2011
CIVIL APPEAL NO.10747 OF 2011
CIVIL APPEAL NO.11398 OF 2011
CIVIL APPEAL NO.183 OF 2012
CIVIL APPEAL NO.167 OF 2012
CIVIL APPEAL NO. 10105 OF 2011
CIVIL APPEAL NO. 5819 OF 2012
CIVIL APPEAL NO. 5260 OF 2012
CIVILL APPEAL D.16394 OF 2013

CIVIL APPEAL NO.1856 OF 2015
(Arising out of SLP (C) No.15768 of 2011)

CIVIL APPEAL NO.1854 OF 2015
(Arising out of SLP (C) No.14478 of 2011)

CIVIL APPEAL NO.1855 OF 2015
Arising out of SLP (C) No.26401 of 2010

CIVILL APPEAL NO.1858 OF 2015
(Arising out of SLP(C) No. 32190 of 2010)

CIVILL APPEAL NO.1859 OF 2015
(Arising out of SLP(C) No.27220 of 2012)

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of separate but similar orders passed by the Armed Forces Tribunal holding the respondents entitled to claim disability pension under the relevant Pension Regulations of the Army. The Tribunal has taken the view that the disability of each one of the respondents was attributable to or aggravated by military service and the same having been assessed at more than 20% entitled them to disability pension. The appellant-Union of India has assailed that finding and direction for payment of pension primarily on the ground that the Medical Boards concerned having clearly opined that the disability had not arisen out of or aggravated by military service, the Tribunal was not justified in taking a contrary view.

3. Relying upon the decisions of this Court in Union of India and Ors. v. Keshar Singh (2007) 12 SCC 675; Om Prakash Singh v. Union of India and Ors. (2010) 12 SCC 667; Secretary, Ministry of Defence and Ors. v. A.V. Damodaran (Dead) through LRs. and Ors. (2009) 9 SCC 140; and Union of India and Ors. v. Ram Prakash (2010) 11 SCC 220, it was contended by Mr. Balasubramanian, learned counsel appearing for the appellant in these appeals, that the opinion of the Release Medical Board and in some cases Re- survey Medical Board and Appellate Medical Authority must be respected, especially when the question whether the disability suffered by the respondents was attributable to or aggravated by military service was a technical question falling entirely in the realm of medical science in which the opinion expressed by medical experts could not be lightly brushed aside. Inasmuch as the Tribunal had failed to show any deference to the opinion of the experts who were better qualified to determine the question of attributability of a disease/disability to a military service, the Tribunal had fallen in error argued the learned counsel.

4. On behalf of the respondents it was, on the other hand, submitted that the decisions relied upon by learned counsel for the appellant were of no assistance in view of the later pronouncement of this Court in Dharamvir Singh v. Union of India and Ors. (2013) 7 SCC 316 where a two-Judge Bench of this Court had, after a comprehensive review of the case law and the relevant rules and regulations, distinguished the said decisions and stated the true legal position. It was contended that the earlier decisions in the cases relied upon by the appellants were decided in the peculiar facts of those cases and did not constitute a binding precedent especially when the said decisions had not dealt with

several aspects to which the decision of this Court in Dharamvir Singh's case (supra) had adverted. Applying the principles enunciated in Dharamvir Singh's case (supra) these appeals, according to the learned counsel for the respondents, deserve to be dismissed and indeed ought to meet that fate.

5. The material facts giving rise to the controversy in these appeals are not in dispute. It is not in dispute that the respondents in all these appeals were invalided out of service on account of medical disability shown against each in the following chart:

Case No.	Name of the Respondent	Nature of Disease/Disability	Percentage of Disability determined
C.A. No. 2904/2011	Ex. Hav. Rajbir Singh	Generalized Seizors	20% for 2 years.
C.A. No. 5163/2011	Ex. Recruit Amit Kumar	Manic Episode (F-30).	40% (Permanent)
C.A. No. 5840/2011	Hony. Flt. Lt. P.S. Rohilla	Primary Hypertension.	30%
C.A. No. 7368/2011	Ex. Power Satyaveer Singh	Diabetes Mellitus (IDDM) ICD E 10.9.	40% (Permanent).
C.A. No. 7479/2011	Ex. Gnr. Jagjeet Singh	1. Non-Insulin Dependent Diabetes Melllitus (NIDDM). 2. Fracture Lateral Condyl of Tibia with fracture neck of Fibula left.	20% each and composite disability 40% (Permanent).
C.A. No. 7629/2011	Ex. Rect. Charanjit Ram	Mal-descended Testis (R) with Inguinal hernia.	60% (Permanent).
C.A. No. 5469/2011	Jugti Ram (through LR)	Schizophrenic Reaction (300)	80%
C.A. D. No. 16394/2013	HavaldarSurjit Singh	Neurotic Depression V-67.	40% for 2 years.
C.A. No. 2905/2011	Ex. Naik Ram Phai	Otosolerosis (Rt.) Ear OPTD	20%
C.A. No. 10747/2011	Sadhu Singh	Schizophrenia	20% for 2 years.
C.A. No. 11398/2011	Rampal Singh	Neurosis (300.	20% for 2 years.
C.A. No. 183/2012	Raj Singh	Neurosis	30%.
C.A. No. 167/2012	Ranjit Singh	Other Non-Organic Psychosis (298, V-67)	20% for 2 years.
C.A. No. 5819/2012	Ex. Sub. Ratan Singh	Primary Hypertension	30% (Permanent)
C.A. No. 5260/2012	Ex. Sep. Tarlochan Singh	Epilepsy (345)	Less than 20%
C.A. No. 10105/2011	Harbans Singh	1.Epilepsy (345) 2. High Hyper-metropia Rt. Eye with partial Amblyopia.	20% each and composite disability 40% for 2 years.
C.A.NO.....OF 2015	Balwan Singh	Personality Disorder	60%

(@ SLP(C)No. 27220/2012)			
C.A.NO.....OF 2015 (@ SLP (C) No. 32190/2010)	Sharanjit Singh	Generalized Tonic Clonic Seizure, 345 V-64.	Less than 20%
C.A. No. 5090/2011 C.A.NO.....OF 2015 (@ SLP (C) No. 26401/2010)	Abdulla Othyanagath Sqn. Ldr. Manoj Rana	Schizophrenia 1. Non-Organic Psychosis 2. Stato-Hypatitis	30% 40%
C.A. No. 2279/2011	Labh Singh	Schizophrenia	30% for 2 years.
C.A. No. 5144/2011	Makhan Singh	Neurosis (300-Deep)	20%
C.A. No. 14478/2011	Ajit Singh	Idiopathic Epilepsy (Grandmal)	20%
C.A.NO.....OF 2015 (@ SLP (C) No. 15768/2011)	ManoharLal	Renal Calculus (Right)	20%
C.A. No. 3409/2011	Major Man Mohan Krishan	IHD (Angina Pectoris)	Less than 20%
C.A. No. 1498/2011*	Ex. Sgt. Suresh Kumar Sharma	1.Generalized Seizors 2. Inter-vertebral Disc Prolapse 3.PIVD C-7-D, (Multi-Disc Prolapse)	70% (permanent)
C.A. No. 5414/2011	Rakesh Kumar Singla	Bipolar Mood Disorder	20% for 5 years.

6. It is also not in dispute that the extent of disability in each one of the cases was assessed to be above 20% which is the bare minimum in terms of Regulation 173 of the Pension Regulations for the Army, 1961. The only question that arises in the above backdrop is whether the disability which each one of the respondents suffered was attributable to or aggravated by military service. The Medical Board has rejected the claim for disability pension only on the ground that the disability was not attributable to or aggravated by military service. Whether or not that opinion is in itself sufficient to deny to the respondents the disability pension claimed by them is the only question falling for our determination. Several decisions of this Court have in the past examined similar questions in almost similar fact situations. But before we refer to those pronouncements we may briefly refer to the Pension Regulations that govern the field.

7. The claims of the respondents for payment of pension, it is a common ground, are regulated by Pension Regulations for the Army, 1961. Regulation 173 of the said Regulations provides for grant of disability pension to persons who are invalided out of 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 above. The regulation reads:

> "173. Primary conditions for the grant of disability pension: Unless otherwise specifically provided a disability pension may be granted to an individual who is

> invalided from service on account of a disability which is attributable to or aggravated by military service 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."

8. The above makes it manifest that only two conditions have been specified for the grant of disability pension viz. (i) the disability is above 20%; and (ii) the disability is attributable to or aggravated by military service. Whether or not the disability is attributable to or aggravated by military service, is in turn, to be determined under Entitlement Rules for Casualty Pensionary Awards, 1982 forming Appendix-II to the Pension Regulations. Significantly, Rule 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982 also lays down the approach to be adopted while determining the entitlement to disability pension under the said Rules. Rule 5 reads as under:

> "5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:
>
> Prior to and during service 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.
>
> 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."

9. Equally important is Rule 9 of the Entitlement Rules (supra) which places the onus of proof upon the establishment. Rule 9 reads:

> "9. Onus of proof. - The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

10. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service, subject to the condition that 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 same will not be deemed to have so arisen". Rule 14 may also be extracted for facility of reference.

> "14. Diseases.- In respect of diseases, the following rule will be observed
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> 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.

> 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.
>
> 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."

(emphasis supplied)

11. From a conjoint and harmonious reading of Rules 5, 9 and 14 of Entitlement Rules (supra) the following guiding principles emerge:

> 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;
>
> in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service; the 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; and if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated.

12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

> "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. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition

may affect the medical categorisation of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

[pic] The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

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 to 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.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on

grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available [pic]evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

13. In Dharamvir Singh's case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:

> "29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).
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> 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 read with Rule 14(b)].
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> 29.3. The 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).
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> 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)]. [pic] 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 [Rule 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 [Rule 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 Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

14. Applying the above principles this Court in Dharamvir Singh's case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:

> "33. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalised seizure (epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."

15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was

disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.

16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.

17. In the result these appeals fail and are hereby dismissed without any order as to costs.

.....J. (T.S. THAKUR) .....J. New Delhi (R. BANUMATHI) February 13, 2015