Controller Of Defence ... vs S. Balachandran Nair on 21 October, 2005

Equivalent citations: AIR 2005 SUPREME COURT 4391, 2005 (13) SCC 128, 2005 AIR SCW 5296, 2005 LAB. I. C. 3924, 2005 (10) SRJ 197, (2005) 35 ALLINDCAS 17 (SC), 2005 (8) SLT 269, (2005) 4 KHCACJ 400 (SC), (2005) 6 ALL WC 5916, 2005 (8) SCALE 517, (2005) 8 SCALE 517, (2005) 107 FACLR 910, (2005) 4 KER LT 703, (2006) 1 LAB LN 16, (2005) 4 PAT LJR 258, (2005) 4 SCT 607, (2006) 1 SERVLR 51, (2005) 7 SUPREME 129

Author: Arijit Pasayat

Bench: Arijit Pasayat, Ar Lakshmanan

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           CASE NO.:
Appeal (civil)  1646 of 1999

PETITIONER:
Controller of Defence Accounts(Pension) and Ors.

RESPONDENT:
S. Balachandran Nair

DATE OF JUDGMENT: 21/10/2005

BENCH:
ARIJIT PASAYAT & Dr. AR LAKSHMANAN

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Kerala High Court holding that the respondent was entitled to disability pension.

Factual background is essentially as follows:

> Respondent joined the Indian Army on 7.2.1972 in the Signal Corps. He was selected to the regular Army through the selection process prescribed by the Army authorities and had undergone a thorough medical examination. Thereafter, he had undergone military training at 3 M.T.R. Goa for a period of two years. After completion of training he was posted in the Signal Company at Jabalpur for a period of three years. Thereafter, he was posted to the border area in Punjab. However, he was not involved in actual combat operations or in combat area. He was working in the office of Radio

machine. He developed certain medical problems and was admitted in the Command Hospital at Chandigarh on 10.8.1977. He was not completely cured and had some kidney complications and the medical authorities found his illness as 'anxiety neurosis'. He was again admitted in the Chandigarh Military Hospital in December 1979 and after prolonged treatment was boarded out and the medical authorities were of the opinion that he became unfit for continuing in service and was put under the category of 'EEE' meaning 'unfit and useless' with effect from 18.3.1980 and was finally discharged from service.

Respondent made an application for disability pension. Same was rejected by the authorities on the ground that the disability of the respondent was not attributable to military service. It was also stated that there was no proof that the disability had existed before or developed during military service and/or had aggravated thereby and military disability pension was accordingly denied. As his various representations did not bring any positive result he filed writ petition before the Kerala High Court. A learned Single Judge held that the respondent had been working in sensitive and turbulent areas and this must have aggravated his disease and the stress and stains of military service were the sole cause of his illness and it was clearly attributable to the stress and strain of military service. The present appellants were therefore, directed to disburse disability pension.

Challenging the order passed by learned Single Judge, a Writ Appeal was filed before the Kerala High Court. The Division Bench by the impugned judgment dismissed the Writ Appeal.

The stand of the appellants before the High Court was that the writ petition was filed belatedly and on account of laches alone the writ petition should have been dismissed. The request for disability pension was rejected in 1980 and he was told that he could file an appeal within a period of six months. The appeal was disposed of much before filing of the writ petition. In addition, it was submitted that the Medical Board itself has found that the illness suffered by the respondent cannot be attributed to military service and when an expert body like the Medical Board gave the opinion the authorities were in fact bound by such decision and the learned Single Judge was not justified in his view. The Division Bench dismissed the appeal on the ground that no psychic disability was noticed when the respondent joined the military service. The fact that the illness occurred while he was in the border area clearly established that the ailment was attributable to military service. The fact that the respondent was working in the border area must have caused some stress and strain and, therefore, learned Single Judge was right in his conclusions.

Learned counsel for the appellants submitted that Regulations for the Medical Service of Armed Forces, 1983 (in short the 'Regulations') provide the ailments which are attributable to such service. Specific reference is made to Regulation 423. Further, the view of an expert body like the Medical Board should not have been

lightly brushed aside by the High Court. On medical check up, the opinions recorded in the Medical Board Proceedings are as follows:

"Part I Personal Statement Anxiety Neurosis 300 (a) (V 67) Part II Statement of case Anxiety Neurosis 300(a) (V 67) Opinion of Lt. Col. B.N. Majumdar, AMC classified Specialist (Psychiatry) Command Hospital (C) Chandigarh dated 11.2.1980. A case of Anxiety Neurosis in a young sepoy whose response to therapy is poor and he shows no desire nor makes any efforts to overcome his disability. He is unlikely to benefit by further therapy and make a fit and stable soldier in future. He is therefore considered unfit for further military service and is recommended medical category REE (Psychological)".

Confidential "A constitutional disease in nature unconnected with service condition."

Reference was also made to Pension Regulations for the Army (in short the 'Pension Regulations'). Rule 173 of such Regulations read as follows:

Primary conditions for the grant of disability pension:

"173. 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 above. The question whether a disability is attributable to or aggravated by military service shall be determined under rule in Appendix II.

Relevant portion in Appendix II reads as follows:

"2. Disablement or death shall be accepted as due to military service provided it is certified that

(a) The disablement is due to 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;

(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.

Note: The Rule also covers cases of death after discharge/invaliding from service.

3. There must be a casual connection between disablement or death and military service for attributability or aggravation to be conceded.

4. In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case."

Learned counsel for the respondent on the other hand submitted that the learned Single Judge and the Division Bench have clearly taken note of the ground realities that in view of the fact that the respondent was posted at sensitive border area, his illness is clearly attributable to military service.

In order to appreciate rival submissions Regulation 423 needs to be extracted. The same reads as follows:

> "423. Attributability to Service:
>
> (a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a casual connection with the service conditions.

All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self inflicted or duty to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and

circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 service in the armed forces. 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.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board/medical officer will specify reasons for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:-

(i) AFMS F-81 in all cases other than those due to injuries.

(i) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it s not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).

In Union of India and Anr. v. Baljit Singh (1996 (11) SCC 315) this Court had taken note of Rule 173 of the Pension Regulations. It was observed that where the Medical Board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court's direction to the Government to pay disability pension was not correct. It was inter alia observed as follows:

"6.....It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made ample clear from clause

(a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder required to be observed. Clause

(c) provides that 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. Unless these conditions satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of Doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service".

The position was again re-iterated in Union of India and Ors. v. Dhir Singh China, Colonel (Retd.) (2003(2) SCC

382). In para 7 it was observed as follows:

"7. That leaves for consideration Regulation

53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and

circumstances of the case, payment already made to the respondent made by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs.