

UNION OF INDIA & ORS.

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v.

EX. SEP. R. MUNUSAMY

(Civil Appeal No. 6536 of 2021)

JULY 19, 2022

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[INDIRA BANERJEE AND V. RAMASUBRAMANIAN, JJ.]

Army Rules, 1954 – r. 13(3) III(v) – Discharge under – Army Pension Regulation, 1961 – Entitlement Rules for Casualty Pensionary Awards, 1982 – r.14 – Armed Forces Tribunal held that respondent was entitled to disability pension by allowing the application filed by him after 20 years – Held: Tribunal patently erred in law in proceeding on the basis of a misconceived notion that any ailment or disability of a soldier, not noted at the time of recruitment but detected or diagnosed at the time of his discharge or earlier, would entitle the soldier to disability pension on the presumption that the disability was attributable to military service, whether or not the disability led to his discharge, and the onus was on the employer to prove otherwise, which the appellants in this case had failed to do – In the instant case, since the discharge was on administrative grounds and not medical grounds, there was no occasion for the Release Medical Board or for that matter, the Resurvey Medical Board to give any opinion as to cause and nature of the ailment of the Respondent of “Right Partial Seizure with Secondary Generalisation 345” as diagnosed, whether such disability/ailment could reasonably have gone undetected at the time of appointment of the Respondent, in terms of Rule 14(b) of the Entitlement Rules – Also, claim of the respondent for disability pension should not have been entertained and that too, 20 years after its discharge.

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Allowing the appeal, the Court

HELD: 1. The Resurvey Medical Board did not opine that the disability, if any, of the Respondent was either caused or aggravated by military service. Even otherwise, the question of entitlement of soldier to disability pension cannot be determined on the basis of medical examination conducted 20 years after his discharge. The Tribunal does not sit in appeal over the expert

- A **opinion of a Medical Board holding that the disability suffered by a soldier was not attributable to or aggravated by military service. There was no reason for the Tribunal not to accept the opinion of the Release Medical Board held on 30th January 1997 and no reasons have been disclosed. In the absence of any finding of infirmity in the decision making process adopted by the Release Medical Board, there could be no reason to direct the constitution of a Resurvey Medical Board, and in any case, not after two decades from the date of discharge. [Paras 15 & 16][479-D-F]**
- B **2. As provided in Rule 14(c) of the Entitlement Rules, if a disease were 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. Even though, the Tribunal accepted that there might be cases, where an ailment/disease could be wholly unrelated to military service**
- C **D and the denial of disability pension could be justified on that ground, the Tribunal overlooked the mandate of Rule 14(c) of the Entitlement Rules. From the Report of the Resurvey Medical Board, as extracted in the impugned judgment and order, it does not appear that the Review Medical Board gave any opinion as contemplated in Rule 14(b) or 14(c) of the Entitlement Rules.**
- E **F There were no materials before the Tribunal, on the basis of which the Tribunal could have been satisfied that, the conditions of service of the Respondent contributed to his disability and/or ailment. The Review Medical Board only assessed the extent of the disability of the Respondent and the approximate duration of the disability, but not the cause thereof. [Paras 23 & 24][481-F-H; 482-A-B]**
- G **3. What exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed and the connection between the cause/aggravation**

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of the ailment/disability and the conditions and/or requirements of service. The Tribunal patently erred in law in proceeding on the basis of a misconceived notion that any ailment or disability of a soldier, not noted at the time of recruitment but detected or diagnosed at the time of his discharge or earlier, would entitle the soldier to disability pension on the presumption that the disability was attributable to military service, whether or not the disability led to his discharge, and the onus was on the employer to prove otherwise, which the Appellants in this case had failed to do. In this case, since the discharge was on administrative grounds and not medical grounds, there was no occasion for the Release Medical Board or for that matter, the Resurvey Medical Board to give any opinion as to cause and nature of the ailment of the Respondent of "Right Partial Seizure with Secondary Generalisation 345" as diagnosed, whether such disability/ailment could reasonably have gone undetected at the time of appointment of the Respondent, in terms of Rule 14(b) of the Entitlement Rules. The Appellants did not get the opportunity to show that the ailment was not caused or aggravated by military service in terms of Rule 14(b) and 14(c) of the Entitlement Rules referred to above. The claim of the Respondent for disability pension should not have been entertained and that too, 20 years after his discharge. [Paras 25 & 26][482-B-G]

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*Union of India v. Rajbir Singh (2015) 12 SCC 264 :
[2015] 2 SCR 183 17 - held inapplicable.*

Case Law Reference

[2015] 2 SCR 183	held inapplicable	Para 17
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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6536 of 2021.

From the Judgment and Order dated 18.02.2020 of the Armed Forces Tribunal, Regional Bench, Chennai in O.A. No. 53 of 2018.

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Jayant K. Sud, ASG, Nachiketa Joshi, Neela Kedar Gokale, Sanjay Kumar Tyagi, Rajan Kumar Chourasia, Arvind Kumar Sharma, Advs. for the Appellants.

B. Karunakaran, E. Sudarsanan, K. Balambhai, S. Gowthaman, Advs. for the Respondent.

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A The Judgment of the Court was delivered by
INDIRA BANERJEE, J.

1. This appeal is against a judgment and order dated 18th February 2020 passed by the Chennai Regional Bench of the Armed Forces Tribunal allowing the application being O.A. No. 53 of 2018 filed by the Respondent about 20 years after he was discharged from the Indian Army, and holding that the Respondent was entitled to disability pension. The arrears were restricted to a period of three years prior to the date of application before the Tribunal.
- B 2. The Respondent was enrolled in the Army on 26th March 1987.
- C By an order dated 5th April 1997, the Respondent was discharged from service on administrative grounds, as an undesirable Soldier under Rule 13(3) III(v) of the Army Rules, 1954. The Respondent had rendered service for nine years seven months and one day excluding 161 days of non-qualifying service. Annexed to the appeal is a copy of the Order/
- D Certificate of the Commandant dated 12th October 1996 regarding the proposal to discharge the Respondent. As per the certificate of the Commandant, service of the Respondent was no longer required. The cause of discharge was shown in paragraph 20 as “Undesirable Soldier under Rule 13 III(V) of Army Rules, 1954”.
- E 3. At the time of discharge, the Respondent was in low medical category. A meeting of the Release Medical Board held on 30th January 1997 found “Right Partial Seizure with Secondary Generalization 345” neither attributable to nor aggravated (NANA) by military service. The disability was assessed @ 20% for two years.
- F 4. The Respondent did not challenge his discharge under Rule 13(3) III(v) of the Army Rules, 1954 as an undesirable soldier. The Respondent, however, made an application claiming disability pension. By order No. G-3/85/318/11-97 dated 19th May 1998, the Office of the Chief CDA(P), Allahabad rejected the claim of the Respondent for disability pension. Relevant part of the said order reads as under :-
- G *“3. Accordingly, for clauses (i) & (ii) of Para 1 above, no disability pension is admissible under the existing rules. The above decision may pl. be communicated to the individual under registered post alongwith MA(P)'s findings, and a clause may also be added therein that he may appeal against the decision not later than six months from the date of issue of*
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this letter, on such grounds as he may deem fit to put forth, if A desired by him.

4. A sum of Rs.10450 on account of invalid gratuity and a sum of Rs.15711 on account of dcrg has been admitted. In case, the individual dies before receiving dcrg amount it should not be paid to his heirs & the matter referred to g-4 B section of this office.”

5. On 6th October 1998, the Respondent filed an appeal against the rejection of disability pension. The Appellate Authority rejected the appeal. By a communication dated 11th January 2000, the Respondent was informed that his appeal against rejection of disability pension had C been rejected by the first Appellate Authority.

6. On 25th August 2017 i.e. almost 20 years after his discharge and over seventeen and a half years after the dismissal of his appeal against the rejection of disability pension, the Respondent sent a legal notice claiming disability pension on the ground of parity with one D Dharamvir Singh and one Rajbir Singh.

7. The case of the Respondent appears to be distinguishable since the Respondent was not discharged on medical grounds, unlike Rajbir Singh or Dharamvir Singh. It appears that in course of his career, the Respondent had earned red ink entries in his service records on seven E occasions, as per the particulars given hereinbelow :-

“S. No.	Date of Offence	Punishment awarded	Sec of Army Act 1950	Remarks
(a)	25 Oct 1990	28 days Imprisonment in military custody while serving with 4002 Field Ambulance	39(b)	Red Ink entry
(b)	25 Apr 1991	14 days detention in military custody while serving with Command Hospital (Western Command) Chandimandir	39(b)	Red Ink entry
(c)	05 Sep 1993	28 days Rigorous Imprisonment in military custody while serving with 166 Military Hospital, c/o 56 APO	39(b)	Red Ink entry
(d)	30 May 1994	28 days Rigorous Imprisonment in military custody while serving with 166 Military Hospital, c/o 56 APO	39(b)	Red Ink entry
(e)	22 Jun 1995	28 days Rigorous Imprisonment in military custody while serving with 155 Base Hospital C/o 99 APO	39(b)	Red Ink entry
(f)	12 Sep 1995	28 days Rigorous Imprisonment in military custody while serving with 155 Base Hospital, c/o 99 APO	39(b)	Red Ink entry
(g)	14 Feb 1996	28 days Rigorous Imprisonment in military custody while serving with 155 Base Hospital c/o 99 APO	39(b)	Red Ink entry”

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- A 8. The Appellants contend that the Respondent was a habitual offender who kept breaching military discipline, notwithstanding repeated counseling and advice given by his superiors. He proved to be an inefficient soldier. Be that as it may, the fact remains that, for 20 years, the Respondent did not question his discharge.
- B 9. By a communication dated 27th October 2017, the Appellant No. 3 replied to the said notice stating:-
- "You have been discharged under Army Rule 13(3) III (v) being undesirable soldier and not invalidated out from service as mentioned in your above legal notice. Hence, disability pension is not admissible as per existing rules in force"*
- C 10. Being aggrieved, the Respondent filed O.A. No. 53 of 2018 before the Tribunal claiming disability pension and benefits under Regulation 183 of the Army Pension Regulation, 1961. The application has been allowed by the judgment and order impugned.
- D 11. At the cost of repetition, it is reiterated that the Respondent was discharged under Rule 13(3) III(v) of the Army Rules, 1954 on administrative grounds as an undesirable soldier and not on the ground of medical disability. Any opinion of the Release Medical Board held on 30th January 1997 with regard to the ailment of the Respondent does not entitle the Respondent to disability pension, as the ailment did not lead to his discharge. In any case, even as per the opinion of the Release Medical Board, the disability, if any, of the Respondent was not attributable to military service. The Tribunal recorded that the Release Medical Board had in Paragraph 3(d) stated "Disability constitutional in origin, unrelated to service".
- E 12. For over 20 years from the date of the discharge, the Respondent did not challenge his discharge on the administrative ground of being an undesirable soldier. His discharge on administrative grounds could not have been challenged after two decades.
- F 13. In the considered opinion of this Court, the Tribunal fell in error in passing its order dated 2nd November 2018 directing the Appellants to convene a Resurvey/Review Medical Board at the Military Hospital, Chennai or a designated hospital for the purpose of examining the applicant and assessing the degree of disability due to "Right Partial Seizure with Secondary Generalisation 345" and the probable duration
- H of disability. The tenor of the order itself shows that even the Tribunal

realized that accurate medical opinion could not have been obtained after lapse of 30 years from the date of recruitment of the Respondent and after 20 years from the date of his discharge. The Tribunal, therefore, sought assessment of ‘probable duration of disability’.

14. Be that as it may, the Appellants, in compliance of the order of the Tribunal, convened a Review Medical Board as directed and submitted a report. The Tribunal noted :-

“7. From the Resurvey Medical Board dated 11.4.2019 held pursuant to our order dated 02.11.2018 placed before us, it is seen that the applicant’s disease “Right Partial Seizure with Secondary Generalisation 345” has now been considered as ‘Remained Static’ and the degree of the disability has been assessed @ 20% for life with effect from 08.04.2019. The Board also assessed the degree of disability for the intervening period from 27.03.1989 and 25.03.1989 @ 20%. The applicant has prayed for grant of disability pension.”

15. Significantly, even the Resurvey Medical Board did not opine that the disability, if any, of the Respondent was either caused or aggravated by military service. Even otherwise, the question of entitlement of soldier to disability pension cannot be determined on the basis of medical examination conducted 20 years after his discharge.

16. The Tribunal does not sit in appeal over the expert opinion of a Medical Board holding that the disability suffered by a soldier was not attributable to or aggravated by military service. There was no reason for the Tribunal not to accept the opinion of the Release Medical Board held on 30th January 1997 and no reasons have been disclosed. In the absence of any finding of infirmity in the decision making process adopted by the Release Medical Board, there could be no reason to direct the constitution of a Resurvey Medical Board, and in any case, not after two decades from the date of discharge.

17. The Tribunal relied on the judgment of this Court dated 13th February 2015 in Civil Appeal No.2904 of 2011 (**Union of India v. Rajbir Singh¹**) heard and disposed of along with 23 other appeals. In the aforesaid case, this Court dismissed appeals arising out of orders passed by the Armed Forces Tribunal and upheld directions for grant of disability pension to the concerned ex-soldiers.

¹ (2015) 12 SCC 264

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- A 18. In *Rajbir Singh* (supra), it was not in dispute that the Respondents in all the appeals had been invalidated out of service on account of medical disability as shown in the chart set out in the judgment. The judgment in *Rajbir Singh* (supra) was rendered in the context of invalidation from service on medical grounds, having regard to the provisions of the Entitlement Rules for Casualty Pensionary Awards, 1982, hereinafter referred to as “the Entitlement Rules”.

B 19. Rule 14 of the Entitlement Rules, referred to in *Rajbir Singh* (supra) is extracted hereinbelow for convenience: -

- C *“14. Diseases.- In respect of diseases, the following rule will be observed –*
- D *(a) 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.*
- E *(b) 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.*
- F *(c) 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)”

- G 20. Rule 14(b) of the Entitlement Rules relied upon in *Rajbir Singh* (supra) is not attracted in this case, because the Respondent was not discharged on account of any disease, ailment or disability, but for administrative reasons. The Rule is only attracted when a disease leads to an individual's discharge or death. Such disease is ordinarily to 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, but not always. In any case, the presumption under Rule 14(b) of the Entitlement Rules is
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rebuttable. 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. There was no direction on the Review Medical Board to give any opinion as to the question of whether the ailment of the Respondent could or could not have been detected at the time of his recruitment. Furthermore, the mere fact that an ailment or disease may have arisen in service does not mean that the ailment or disease is attributable to service conditions.

21. In the instant case, as observed above, the discharge of the Respondent was not on account of any disability or disease but on administrative grounds and such discharge was not questioned for two decades. The judgment in *Rajbir Singh* (supra) or the judgments relied upon in *Rajbir Singh* (supra) have no application in the facts and circumstances of this case. The learned Tribunal noted red ink entries in the service records of the Respondent on the ground of unauthorized absence, but arrived at the purported finding in effect that the absence of the Respondent was only on account of his ailment/disability. Such finding is patently conjectural, and not based on any materials on record.

22. Moreover, even in the case of discharge on account of any disability or disease, the authorities might dispute that such disability or disease was caused or aggravated by military service. The Medical Board might, for reasons to be stated, give an opinion that the disease could not have been detected on medical examination prior to appointment, in which case the disease/disability would not be deemed to have arisen during service.

23. Moreover, as provided in Rule 14(c) of the Entitlement Rules, if a disease were 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.

24. Even though, the Tribunal accepted that there might be cases, where an ailment/disease could be wholly unrelated to military service and the denial of disability pension could be justified on that ground, the Tribunal overlooked the mandate of Rule 14(c) of the Entitlement Rules. From the Report of the Resurvey Medical Board, as extracted in the impugned judgment and order, it does not appear that the Review Medical Board gave any opinion as contemplated in Rule 14(b) or 14(c) of the

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- A Entitlement Rules. There were no materials before the Tribunal, on the basis of which the Tribunal could have been satisfied that, the conditions of service of the Respondent contributed to his disability and/or ailment. The Review Medical Board only assessed the extent of the disability of the Respondent and the approximate duration of the disability, but not the cause thereof.
- B 25. What exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed and the connection between the cause/aggravation of the ailment/disability and the conditions and/or requirements of service. The Tribunal patently erred in law in proceeding on the basis of a misconceived notion that any ailment or disability of a soldier, not noted at the time of recruitment but detected or diagnosed at the time of his discharge or earlier, would entitle the soldier to disability pension on the presumption that the disability was attributable to military service, whether or not the disability led to his discharge, and the onus was on the employer to prove otherwise, which the Appellants in this case had failed to do.
- C 26. In this case, since the discharge was on administrative grounds and not medical grounds, there was no occasion for the Release Medical Board or for that matter, the Resurvey Medical Board to give any opinion as to cause and nature of the ailment of the Respondent of "Right Partial Seizure with Secondary Generalisation 345" as diagnosed, whether such disability/ailment could reasonably have gone undetected at the time of appointment of the Respondent, in terms of Rule 14(b) of the Entitlement Rules. The Appellants did not get the opportunity to show that the ailment was not caused or aggravated by military service in terms of Rule 14(b) and 14(c) of the Entitlement Rules referred to above. The claim of the Respondent for disability pension should not have been entertained and that too, 20 years after his discharge.
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27. The appeal is, therefore, allowed. The impugned judgment and order is set aside. There shall be no order as to costs.