IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A. No. 208/2010
[W.P. (C) No. 9764/2009 of Delhi High Court]

Krishna Singh .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner : Sh. S.M. Dalal, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

O R D E R

1. This case was filed in Delhi High Court on 08.05.2009 and subsequently it was transferred to this Tribunal on its formation on 05th November, 2009.

2. By this petition the petitioner has prayed for quashing of the impugned order dated 01.08.2008 and for grant of disability pension with effect 26th July, 2004 @ 60% which should be

computed @ 75% in terms of broad banding Government of India Notification.

3. The facts of the case are that the petitioner was enrolled in the Army on 09th March, 2002 after completing his training, he was posted to his Unit at Pokhran. Here he developed mental disease of Schizophrenia in July, 2003. He was hospitalised and subsequently he was invalided out on 26th July, 2004. His disability was given as 60% for life but neither attributable nor aggravated by Military Service. He filed appeal for grant of disability pension which were rejected.

4. On 23rd January, 2008, the petitioner filed a Writ Petition in Delhi High Court which he withdrew since the decision of the second appeal had not been taken. The second appeal was rejected on 01st August, 2008.

5. Learned counsel for the petitioner argued that since the very fact that petitioner was invalided out from Military Service the decease/disability is to be either attributable or aggravated by Military Service because at the time of entry no such disability was

observed by the Medical Authorities. He further argued that on being invalided out due to disability the petitioner is entitled to broad banding of allowance since he was invalided with 60% for life, thus, he is entitled to 75% disability allowance.

6. Learned counsel for the respondents placed before us the copies of the Invaliding Medical Board proceedings dated 15th July, 2004. As per these proceedings, disease Schizophrenia has been held to be not attributable to nor aggravated by the Military Service. His disability was assigned as 60% for life.

7. Having heard both the counsels at length and examined the arguments, we are of the opinion that the Medical Authorities on 15th July, 2004 have not been able to prove that this disability was existing at the time of individual entering into the Army. They have not assigned any reason to say as to why it could not be detected at the time of entry especially in this case where the date of entry into service was 02nd March, 2002 and the disease manifested in July, 2003. The Medical Board has simply stated to the Question No. 2 “Did the disability exist before entering service?” – Could be. To question No. 3 “In case the

disability existed at the time of entry is it possible that it could not be detected during the routine medical examination carried out at the time of the entry?" – Yes. Further the Psychiatric Specialist has opined that "this illness is likely to be aggravated in military service". As regards attributability/aggravation of disease, Appendix-II of the Pension Regulations of the Army, 1961 lays down as under :-

> *"18. Predisposition : "Predisposition" of "inherent constitutional tendency" in itself is is not a disease. And if there is a precipitating or causative factor in service which produces the disease, then it is attributable to service, not with standing the inherent disposition.*
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> *19. Aggravation : If it is established that the disability was not caused by service, attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim.*
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> *20. Conditions of Unknown Aetiology : There are a number of medical conditions which are unknown aetiology. In dealing with such conditions, the following guiding principles are laid down:*
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> *(a) If nothing at all is known about the cause of the disease, and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.*
>
> *(b) If the disease is one which arises and progresses independently of service/environmental factors than the claim may be rejected.*

Regulation 423 (c) of Regulations for Medical Services, 1983 further lays down that

> *"423 (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 detennine 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 risen during service."*

In the case of W.P (C) No. 18907/2006 in Hon'ble Delhi High Court their Lordships held that "*unless there is a family history of mental illness, or there is such detection of the problem in the particular person before hand, it must normally be assumed to be a case of attributable or aggravated by military service"*. This view of Hon'ble Delhi High Court has further been upheld by Hon'ble Supreme Court on 10.09.2009 in SLP (C) No.6374/2009 – Union of India & Others vs. Ved Prakash.

8. Taking into consideration para 4 (c), 9 and 14 of Appendix-II to the Pension Regulations for the Army, 1961 and going by our earlier judgment given in the case of Nakhat Bharti vs. Union of India [T.A. No. 48/2009], it is incumbent on the Medical Authorities to give reasons as to why the disease could not be detected at the time of entry. In the absence of any justified reason on the part of the Medical Authorities, it is reasonable to presume that the disease has arisen/has been aggravated by the Military Service.

9. In view of the foregoing, the petition is allowed. The petitioner shall be granted 75% disability pension from the date of discharge i.e. 26th July, 2004 with 12% interest p.a. The whole exercise should be completed within 75 days from the date of this order. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
October 01, 2010.