

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

T.A. No. 259/2010

[W.P. (C) No. 9804/2009 of Delhi High Court]

Ex. Cpl. Pradeep Kumar YadavPetitioner

Versus

Union of India & OthersRespondents

For applicant : Sh. Yashpal Rangi, Advocate.

For respondents : Ms. Kanika Agnihotri with Ms. Shikha
Tandon, Advocates.

CORAM:

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

**JUDGMENT
12.08.2010**

1. The petition was filed in Delhi High Court on 06th July, 2009 as W.P. (C) No. 9804/2009 and was transferred to the Armed Forces Tribunal on 09.11.2009.

2. Brief facts of the case are that the petitioner was enrolled in the Air Force on 11th May, 1985. He was promoted to the rank of Corporal on 11th May, 1990.

3. On 26th September, 1991, the petitioner is alleged to have been beaten up by his course mates in which he received multiple blunt injuries over both upper and lower limbs. Consequently, he was admitted to the Station Sick Quarter. He also started showing signs of peculiar behaviour and was transferred to the Command Hospital, Air Force, Bangalore till 19th November, 1991. The petitioner was again admitted in the Air Force Hospital, Bangalore on 02nd January, 1992 from where he was discharged on sick leave on 14th January, 1992. On reporting back to the Air Force Hospital the petitioner was placed in Medical Category CEE for affective disorder on 23th January, 1992.

4. On 22nd April, 1996, the petitioner was again admitted in the Military Hospital for review. On 04th September, 1996 the petitioner was once again admitted in the Military Hospital, Calcutta since his condition had deteriorated. He was administered ECT without prior consent. He was invalidated out from service on account of 50% disability for "Affective Psychosis" on 24th December, 1996. His case for disability was rejected by CDA (Pensions) Allahabad vide order dated 22nd July, 1998. The petitioner appealed but these were rejected on 09th May, 2000.

5. The petitioner filed W.P. (C) No. 4343/2001 before Delhi High Court. The petition was disposed of through a batch of cases on 27th November, 2003 by Hon'ble High Court. Consequent to the common order by the Hon'ble High Court his case was reviewed by Air Headquarters and disability claim rejected once again on 19th July, 2004. The Air Headquarters once again examined the AFMS 16 and opined that the disability is not attributable nor aggravated by service condition.

6. The petitioner issued a legal notice and also filed for contempt of Court order on 11th May, 2006. The petition was however withdrawn with liberty to challenge the order of 19th July, 2004. Hence, this petition was filed before the Hon'ble Delhi High Court.

7. Learned counsel for the petitioner argued that the Hon'ble High Court dated 27th November, 2003 was explicit. Order stated that :-

“There is yet another area where we would like to give an authoritative pronouncement with regard to method and the authority as to who will determine the aspect of attributability or aggravation in the military service. We have been shown Regulations for the Medical Services for

the Armed Forces 1983. Paragraph 423 of the said Regulations deals with attributability to service. The aforesaid two aspects of disability whether it could be attributed to military service or has aggravated on account of service shall be determined with reference to paragraph 423 read with Pension Rules, 1961 (Rule 7-3 B of the Entitlement Rules) and for the persons who are boarded out on or after 1st January, 1982 under amended Rules 14-B, 17 and 27.

We may also observe that as per the Scheme of the Pension Rules, the disability pension has two components, one is for service rendered and, second, for element of disability.

The writ petitions are allowed and we direct the respondents to pay the disability pension in terms of the above, within four months.”

8. He further argued that going by the opinion of the Psychiatrist on 23rd October, 1996 which reads as under :-

*“A 31 year old airman with 11 years of service is a patient of Affective Psychosis. Onset of illness in September 91 nearly a year after his father's death in the face of financial stress. Illness presented with typical manic features. Admitted and treated with lithium and neuroleptics he remitted. Thereafter he was observed in low medical category with periodic review. Last review was in Apr 96 when he was continued in medical category BEE (Psy) Perm. **Patient presented with a manic relapse in the face of environmental problems in occupations sphere and was hospitalised on 04th September, 1996.** Patient has again responded well to antipsychotics, ECTs (5) and other supportive measures.*

He has no genetic loading for mental illness. Though he has responded well for the time being, because of relapsing nature of illness future episodes of manic or depression occurring in the face of stress or otherwise cannot be ruled out entirely. Patient has lost motivation for further service mainly due to the commotion that gets created due to his behaviour when he is in relapse.”

He also stated that vide para 3 and 4 of the “Entitlement Rules”, Appendix II states as under :-

“3. There must be a casual connection between disablement and air force 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 of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.”

9. Learned counsel further argued that since the petitioner had no family history and therefore no genetic loading, it is reasonable to assume that the disability was attributable to service and certainly aggravated by service conditions as specifically stated by the classified Specialist in Psychiatry, Lt. Col. HRA Prabhu on 23rd October, 1996 while examining the petitioner at the Invalidating Medical Board.

10. Learned counsel for respondents cited the judgment in the case of Secretary, Ministry of Defence and Others vs. Damodaran AV (Dead) through LRs and Others - MANU/SC/1481/2009 in which their Lordships had opined as under :-

“Here is also a case where the Medical Board has given its definite opinion that disease from which the petitioner was suffering was not attributable or aggravated by military service. It was recorded by the Medical Board that the case is of Schizophrenia in a young officer with five years service manifested in disorder of thought, perception, behaviour and emotional incongruity. Further opinion of the Board is that he had been reviewed by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. In disablement assessed is 60% (sixty percent) disability neither attributable nor aggravated by service.

Clearly therefore, the opinion of the Medical Board ruled out the possibility of the disease of the respondents being attributable to or aggravated by military service. That being the position, the respondent cannot claim for payment of any disability pension. Another relevant factor which is required to be noted that the report of the medical board is not under challenge. As has been held by this Court, such opinion of the Medical Board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent.

I fully endorse and agree with the conclusion arrived at by my esteemed brother Justice Dalveer Bhandari that the legal representative of the respondent A.V. Damodaran are not entitled to disability pension but if any amount towards such disability pension has

already been paid, the same may not be recovered from the legal representatives. I also hold that the appeal stands allowed in terms of the aforesaid order.”

11. Learned counsel for the respondents stated that the petitioner had appeared before an Invaliding Medical Board on 11th October, 1996. The Medical Board clearly stated that the disability assessed was 50% but it was neither attributable to nor aggravated by service. Besides, the case is barred by ‘*res judicata*’ as based on the orders of Hon’ble Delhi High Court in respect of ‘Ex. Ct. Jasbir Singh & Others vs. Union of India and Others, the Air Headquarters carried out a review and disposed of the case with a reasoned speaking order. The operative part of the order reads as under :-

“We make it clear, following the ratio of the judgment, as aforesaid, that respondents must grant pensions to such writ petitioners in whose favour the medical opinion in terms of AFMS Form-16 has been given and a certificate to that effect has been issued in terms of the said Form-16 as there is no reason why they should not be granted pension in terms thereof. In such cases, where on the material available on the basis of advice of the specialist, for the reasons to be recorded in writing, there are strong reasons for coming to a different conclusion than what has been recommended on AFMS Form 16 by the Competent Authority, the case of such petitioners shall be assessed by a Review Medical Board . In case the Review Medical Board also agrees with opinion of the Medical adviser attached to the office of CDA (Pension) in that case an

opportunity shall be granted to the petitioner concerned to plead his case before the appellate authority for grant of pension.”

12. He further argued that the petitioner has been granted Invalid Pension with effect from 29.12.1996 which was Rs.1275/- p.m. and would have been enhanced after the award of the Sixth Central Pay Commission. The Pension Order was issued on 16th August, 2001.

13. We heard both the parties at length and also perused the records. The medical opinion of the Invaliding Medical Board held on 28th October, 1996 clearly states that the disability is 50% for two years and that it is neither attributable to nor aggravated by service conditions, however, the Specialist in Psychiatry had observed that “patient presented with a manic relapse in the face of environmental problems in occupations sphere and was hospitalised on 04th September, 1996’. Therefore, there seems to be mismatch between the opinion of the Psychiatrist and that of the Medical Board. The Resurvey Medical Board should have been held in 1998 which has not been done. We therefore, direct that petitioner should be called before a Resurvey Medical Board and his status, especially with regard to attributability and or

aggravation should be examined in particular by the Medical Board. Whatever be the outcome, he should be granted that relief. This exercise should be completed within three months from today. The petitioner is in receipt of invaliding pension as per the Office of the Deputy Controller of Defence Accounts (AF), New Delhi vide order dated 16th August, 2001, will continue.

14. In view of the foregoing the petition is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 12, 2010.