

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 318 of 2010

[Arising out of WP(C)No. 8294 of 2009 of Delhi High Court]

Ex. Rect. Sunil Kumar Sharma ...Petitioner

Versus

Union of India & Ors. ...Respondents

For the Petitioner : Col. S.R. Kalkal (Retd.), Advocate

For the Respondents: Mr. Gaurav Liberhan, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has prayed that by writ of mandamus directing the respondents to release

disability pension which consists of disability element of pension and service element of pension from the date of discharge of petitioner. He has also prayed that the order dated 30th July, 1984 and the order dated 6th October, 2008 may be quashed being arbitrary and illegal.

2. Petitioner was enrolled in the regular Army as a combatant soldier on 26th March, 1983, after having been found medically and physically fit in all respects.
3. Petitioner during tough physical training of the Army in Madras Engineering Group started having a health problem. He was treated at Air force Hospital, Bangalore but could not be cured.

4. The petitioner was brought before Medical Board and authorities recommended that the petitioner be invalidated out of service and placed the petitioner in a Low Medical Category EEE by assessing disability @ 20%. The petitioner was diagnosed as a case of neurosis.
5. Petitioner was discharged from Army on 18th April, 1984 and he was not given any shelter of appointment. Petitioner made constant correspondence with his record office from 1986 to 2003 without any benefit. Petitioner was informed that since his disability is not attributable to the military service therefore he was not given any pension. Petitioner continued his process of correspondence and filed Writ Petition No. 1266 of 2006 before Hon'ble Delhi High Court and Hon'ble High Court vide order dated 30th April, 2008 disposed

the same with the direction to hold appeal Medical Board.

6. In pursuance of the direction given by the Hon'ble Delhi High Court the appeal Medical Board was held and detailed reasons were given by the appeal Medical Board for his discharge, that why this neurosis could not be detected at the time of his initial recruitments. The observation given by the Medical Board reads as under:

“The ID is a disorder which has genetic and developmental mechanisms. Other factors like neurodevelopmental organisation, neurocognitive architecture, critical social transition and repeated stress episode have a role to play in the occurrence of the disorder. In view of the above and in the instant case as no obvious triggers were evident and the ID being predominantly a genetic/developmental disorder is not attributable to mil. service. The ID cannot be detected when the indl. Is asymptomatic. The service related aggravating factors as mentioned in para 54,

chapter VI, GMO Mil Pens-2002 & amendment – 2008 did not exist in the instant case, hence the ID is conceded as neither attributable nor aggravated by mil. service.”

7. A detailed order was given that this was a genetic and it cannot be detected at the time of initial recruitment and detailed factor mentioned in para 54 Chapter VI, GMO Mil Pens-2002 & amendment 2008 did not exist in the case of petitioner. The matter was discussed, in detail, in the judgment delivered by us in the case of '*Nakhat Bharti etc. etc. V. Union of India & Ors.*', in that the matter was discussed at length that in order to deal with the subject detailed instructions have been given to the medical board and especially in case of a mental behaviour and psychiatric disorders they can occur in certain conditions like

counterinsurgency or high altitude area service, deployment at extremely isolated posts, diving or submarine accidents etc. But, those conditions in case of petitioner did not exist as he was not posted in such a condition. Therefore, the medical board held that the psychological disorder of the petitioner is not attributable to military service.

8. Learned counsel for the petitioner referred to various decisions of the apex court in the case of '*S.R. Bhanrale v. Union of India & Ors.* [AIR 1997 SC 27], *S.K. Mastan Bee v. The General Manager, South Central Railway & Anr.* [JT 2002 (10)SC 50], *Union of India v. Tarsem Singh* [2009 (1) All India Service Law Journal 371] and *Basanti Prasad v. The Chairman, Bihar School Examination*

Board & Ors. [2009 (3) SCT 761] to support his contention that delay in such matter is not fatal.

9. It is true that question of delay varies from case to case and the courts can modulate the relief. But, in this case the delay was from 1984 to 2006 when petitioner woke up and filed a petition before Delhi High Court and obtained order for re-examination by medical board. Such unexplained delay cannot be condoned and the correspondence will not extend the time. Be that as it may, but the fact remains that in the present case medical board was convened and given observations, according to the directions given by the Hon'ble High Court, a detailed reason has been passed by the medical board that the petitioner's disability was not attributable to military service. Therefore, there is

no ground to interfere in this petition and the same
is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
08th February, 2010