

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

19.

O. A. No. 512 of 2010

Ex. Gnr. Bhudo Singh Chonkar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. D.N. Sharma, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

20.4.2011

1. Petitioner by this petition has prayed that he may be allowed disability pension since 1995 and interest @ 15% per annum.

2. The petitioner was enrolled in service on 12th August 1985 on the rolls of 98-~~7~~ Field Regiment and he was invalidated out of service on 14th December 1995 on medical grounds that he was suffering from Schizophrenia as per the discharge slip issued by the Medical Board on 13th December 1995. He was informed by the Records Office by a letter dated 12th September 1996 that his disability pension claim together with connected documents were forwarded to the Controller General Defence Accounts (Pensions), Allahabad. On 19th February 1997, the Records Office sanction a service element of Rs. 375/- for life but no disability pension was sanctioned. Thereafter he was informed by the Records Office on 19th February 1997 that the CCDA and CCDA(P), Allahabad had intimated that they had rejected

the claim of the petitioner for disability pension though it has resulted in invalidment from service but it was not attributable to military service. The Medical Board on 22nd November 1995 found that the petitioner was suffering from Schizophrenia and the disability was 40% for two years and second the backache was disability attributable to military service but to 10% and the composite was 50% but he was not given a disability pension as his disability on account of Schizophrenia was not attributable to military service. Therefore, he was not given the disability pension as same was found to be less than 20%. Again a Medical Board was held in July 2000 but there also he found that petitioner was suffering from Schizophrenia and Low Backache but that was found less than 20%. Then again a Medical Board was held in 2002 but there again they found Schizophrenia not attributable to military service and as such overall disability was found to be less than 20%. Therefore, he was not given any benefit of disability pension. This Court had an occasion to examine the matter in detail with regard to Schizophrenia and the disability with reference to Regulation 173 read with para 423 of the Regulation and it has been held that normally as per the Regulation there is a presumption in favour of the incumbent unless it is rebutted by the medical authorities that why the disease was not detected at the time of initial induction into the service. {Refer to **Nakhat Bharti etc. v. Union of India & Ors. (T.A. No. 48 of 2009 decided on 28th October 2009)**}. Now in present case also the authorities has not said a word that whether when the petitioner was inducted in service he was suffering from any disability. All that is said is it is constitutional. This is a total misnomer. We have already held in the aforesaid judgment as well as in the subsequent case of **Krishna Singh v. Union of India & Ors. (T.A. No. 208 of 2010)** decided on 1st October 2010. The other decisions pertaining to the subject which have taken the view that Schizophrenia is always be attributable to military

service are **Tarsem Singh v. Union of India & Ors. (Civil Writ Petition No. 11185 of 1999)** decided on 6th December 2000 by the Punjab & Haryana High Court, **Ex. W.O.S.S. Gautam v. Union of India & Ors. (W.P.(C) No. 11698 of 2004)** decided by the Division Bench of Delhi High Court on 19th October 2006 and **M.S. Pemmaiah v. Union of India (W.P.No. 9452 of 1994)** decided by the Karnataka High Court on 13th August 1997. Thus from the series of decisions which have taken the view that unless specific reasons have not been assigned by the medical authorities that why this disease was not detected at the time of induction then it will be presumed to have been occurred during the service. Therefore there is a general presumption in favour of the incumbent who has been invalidated out on account of the disease that this was attributable to the military service.

3. In the present case it is admitted position that petitioner was suffering from Schizophrenia and was invalidated out of service on that account and backache, the disability was found to be 40% for a period of two years. Subsequently in all medical examinations he was found to be suffering from Schizophrenia and backache but because of Schizophrenia being not attributable to military service, the disability was found to be less than 20% and the incumbent was denied the benefit of pension. Since we have already held that when a person is invalidated out because of Schizophrenia and no reason has been assigned that why this disease was not detected at the time of initial induction into service then it is presumed to have been incurred by the incumbent during the service. Therefore, we hold that the petitioner has suffered from Schizophrenia which is attributable to the military service as he has been invalidated out on that basis and consequently he is entitled to a disability pension @ 40% from 1995. Now it is to be rounded up to 50%. He is

entitled to get disability pension @ 50% but he has filed a petition before us in 2010, therefore, his arrears should be worked out with disability @ 50% and he shall be paid the arrears for the last three years preceding the date of filing of the petition. The petition was filed on 30th August 2010. The petitioner shall be entitled to all the benefits with arrears with 12% interest from three years preceding the date of filing of the petition. Petition is allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 20, 2011