

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

21.

T.A.No. 465 of 2010
In W.P. (C) No. 6722 of 2007

Pritish Chaudhury

.....Petitioner

Versus

Union of India & Ors

.....Respondents

For petitioner: Ms Jyoti Singh, Sr. Advocate with Ms Tinu Bajwa, advocate and
Sh Dinesh Yadav, 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
08.02.2011

This petition has been transferred from the Hon'ble Delhi High Court on formation of this Tribunal.

The petitioner by this petition has prayed to quash the order passed by the invaliding medical board held on 31.3.2005 as approved by DGMS (Army) on 4.5.2006 where in the disability is assessed at 50% has been held neither attributable to nor aggravated by military service and respondents be directed to pay disability pension @ 50 % wef.16.6.2006 along with interest. He has also prayed that order dated 20.9.2006 be quashed as the directing recover from the salary already paid to him for hospitalization may also be quashed as the said period has been regularised by the Unit and he has also prayed to release the DSOP and AGIF.

The petitioner joined the National Defence Academy in 1998 and passed out in 2002. In January 2002 joined the Indian Military Academy Training and commissioned as Lieutenant in 2003. He belong to 13 Mahar Regiment.

The petitioner suffered from Psychotic illness because of abnormal climatic conditions prevailing at the Line of Control. On 26.8.2003 the petitioner was admitted in 170 MH and after four days he was transferred to Command Hospital, Udhampur on 30.8.2003 and later referred to MH Meerut for opinion of Senior Advisor. The medical board placed him in Low Medical Category S4 temporary for four weeks and again examined on 20.11.2003 by the Medical Board and S4 was maintained. On 7.1.2004 he was examined by a medical board by the Command Hospital Northern Command and found that the petitioner was suffering from "acute and transient psychotic disorder with associated acute stress" and continued to be in the category of Shape 4 Temp for 24 weeks and was approved by the DGMS (Army) on 17.2.2004. It was mentioned that in Column 17 that disability was contractive in service and the in column in 18 it was mentioned that it was contractive in circumstances over which he had no control.

The petitioner recovered from illness and joined as Unit Intelligence Officer of the D Company. The petitioner represented services for National Chess Championship in Pune and also attended the Seminar at Jaipur in 2004.

The petitioner was again considered by the medical board on 27.5.2004 in Ahmedabad for categorisation and the disability remained the same and extended for 24 weeks. During November 2004 the petitioner moved to Chatrakapar near

Kawas, Rajasthan. While the petitioner was performing his duties and tasks assigned to him the petitioner suffered medical problem and was admitted to MH Jodhpur on 22.11.2004. He was transferred to MH Ahmedabad and remained till his invalidation. He was also sent to CH, Pune for senior Advisor (Psy) on 9.1.2005.

Thereafter on 1.3.2005 the petitioner was issued with a show cause notice stating that an invaliding medical board has been held in which he was found suffering from Schizoaffective Disorder and thus found him permanently unfit for further military service. The petitioner filed reply to the show cause notice.

Thereafter on 31.3.2005 an invaliding medical board was held at MH Ahmedabad and found the petitioner was suffering from disability "Schizoaffective disorder" and assessed the disability at 50 % and gave a finding that the disability was neither attributable to service nor aggravated by service it is a constitutional disorder.

Thereafter the petitioner received another show cause notice on 1.4.2005 with the same contents filed an appeal against decision of the medical board but without any result.

Thereafter on 26.5.2006 MS Branch issued a letter based on the proceedings of the invaliding medical board and directed the concerned Unit to publish Part II order notifying the date of admission of the officer in hospital to be from the Army 16.6.2006. However, for the complete period he was paid salary ie from 1.4.2005 to 31.3.2006. However, for the period April and May 2006 TDS was deducted but no

form – 16 was issued. Then on 14.3.2007 the unit issued part II order regularising the hospitalisation period. The entire period of absence from 22.11.2004 to 16/6/2006 was regularised by grant of sick leave from 22.11.2004 to 20.3.2005 and by granting furlough leave from 22.3.2005 to 16.6.2006. The entire period of hospitalisation has been already been regularised by the Unit. The petitioner submitted invalidated on medical grounds has not been paid his dues on account of DSOP and AGIF therefore filed this petition.

Reply has been filed by the respondent and since medical board has categorically recorded the petitioner disease is not attributable nor aggravated ~~to~~ ^{by} military service disability pension so far as the recovery for the aforesaid period it was stated it will depend on the regularisation of the absence by the unit.

We have heard the learned counsel for parties.

We directed on 3.8.2010 to reconvene the medical board and sought the opinion of Psychiatrist to examine the patient and give his opinion that whether environmental stress can aggravate disease. The report has been placed before us dated 02.09.2010 as per this medical board report the present Schizoaffective disorder – is attributable to military service. Since now respondents has already admitted that this disability is on account of military service and disability has already been assessed 50 %. The petitioner is now entitled to disability pension @ 50 % for life. Place the medical report on record.

Since, now so far as the petitioner's grievance with regard to disability pension concerned is redressed, authorities are directed to release his disability pension @ 50 % from the date of discharge along with interest @ 12 % within a period of four months.

The next question is of recovery from his salary. As per reply by respondent that it will depend on regularisation of this period by the Unit. Now that Unit has already regularised the absence ~~to~~ because of hospitalisation no recovery shall be made. Petition is allowed. No orders as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 08, 2011