

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

T.A.No. 497 of 2010

Writ Petition (Civil) No. 10416 of 2009

Ex. Nk. Ram Kumar Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Santosh Kumar, Advocate.

For respondents: Sh Ankur Chhibber, Advocate with Capt. Alifa Akbar.

CORAM:

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

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

O R D E R

07.02.2011

1. Petitioner by this petition has prayed that by appropriate writ or direction the impugned letter dated 5th February 2004 and 19th October 2005, issued in pursuance to the directions given by the Hon'ble Delhi High Court in Writ Petition (Civil) No. 2677 of 1996 and Writ Petition (Civil) No. 9345 of 2004 may be quashed.

2. Petitioner entered into the service on 30th June 1971 and was given a trade of driver mechanical transport. At the time when he was inducted into service he was sent for detailed physical and mental examination and nothing abnormal was found. After recruitment he continued to discharge his service for more than 15 years without any blemish record. When the petitioner was posted in Eastern Sector 107, Brigade COY Workshop in Assam in January 1985 he was prone to water borne diseases and hypertension because of environmental conditions wherein he was

performing his duties efficiently. Petitioner was discharged from service in the event of physical and mental stress and strain because of long and continuous working hours without much of rest whatsoever. He developed depression during the year 1985 for which he was admitted in the Base Hospital, Guahati. Thereafter he was transferred to Command Hospital, Calcutta where he was diagnosed to be a case of Non-Organic Psychosis. He could not have fully cured despite all efforts and was placed in medical category 'EEE' and recommended to be invalided out of service with 50% disability as per the Medical Board opinion held in April 1997. On the basis of the Medical Board findings he was discharged from service on 18th July 1997 and he was discharged with a discharge slip. Petitioner has put in 16 years of service to his credit and become entitled to both service as well as disability pension. He was admitted to a service pension commensurate to 16 years of service but his claim for disability pension was rejected without application of mind. The medical authorities by the letter dated 25th October 1989 said that the disease is neither attributable to nor aggravated by the military service. It is alleged that petitioner is 50 years of age and he has full family to take care. Since his request for grant of disability pension was rejected therefore he filed a writ petition in Delhi High Court in 1996 which was disposed of with a batch of petitions and in that the Delhi High Court directed that the case of the petitioner and similarly situated be examined again in terms of the Rule 7B to the Appendix II of the Pension Regulations of Army and in reference to para 423. Petitioner's case was considered in reference to the directions given by the Hon'ble Delhi High Court and on 5th February 2004 the Medical Board's recommendations were re-examined and it was held that the disability of the petitioner is not attributable to or aggravated by the military service. Accordingly, on 5th February 2004 a letter was issued and it was mentioned that petitioner has been

invalided out of service on 19th April 1997 on account of the disease Non-Organic Psychosis with 50% disability but is neither attributable to nor aggravated by the military service.

3. A detailed order was passed giving reference of the judgment of the Hon'ble Delhi High Court and another judgment of the Delhi High Court in case of Ex. Signalman Bhagwan Singh v. Union of India & Ors. Against this order petitioner again filed a writ petition before the Delhi High Court which was transferred to this Tribunal after its formation.

4. A reply has been filed by the respondents and respondents have contested the position and said that since the petitioner was placed in low medical category EEE due to the disability of the Non-Organic Psychosis which was neither attributable to nor aggravated by the military service, it was found to be a constitutional disease and therefore services of petitioner has been discharged. After examining the Medical Board proceedings a detailed speaking order which is impugned before us it was passed in pursuance of direction of Hon'ble Delhi High Court that this disability is not attributable to nor aggravated by the military service.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner submitted that since at the time when petitioner was inducted into service there was no disability and at the end of 15 years of service he has been discharged being on low medical category, therefore it should be presumed that the petitioner has suffered the said disease because of the stress

and strain of the military service. Learned counsel for the respondents has produced before us the original papers of the Medical Board and the report given by the Psychiatrist. After going through the report of the Psychiatrist, it appears that petitioner's disease is not attributable to nor aggravated to the military service. From Medical Guidelines which has been issued from time to time, we understand that after a person is posted at high altitude or in similar situations or a stressful situation, he can develop such kind of psychiatric problem. Petitioner being posted in Assam during 1985 that was a very peaceful area at that time, therefore it cannot be said to have been working in a stressful situation which can generate the disease of Psychosis. It was a plain and simple Psychosis which arose on account of some unhidden reasons which nobody can fathom either at the time of induction into service or during the service unless there are factors which can legitimately be connected giving rise to a stressful situation resulting in the Psychosis problem. But there is no such peculiar situation in the present case since he has been discharged on normal course and not due to working in a stressful situation.

7. Thus in this background we are of the opinion that there is no reason to disbelieve the findings of the Medical Board and consequently we do not find any merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 07, 2011