

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

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O.A. No. 162 of 2011

Ex Nk Lalindra Chaudhary

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Ms. Barkha Babbar, Advocate.

CORAM:

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

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

ORDER

16.02.2012

1. Petitioner by this petition has prayed to set aside the impugned order dated 25<sup>th</sup> June 2010 passed by Defence Minister's Appellate Committee and set aside the opinion of the Army Medical Board dated 1<sup>st</sup> February 2010 being contrary to the provisions of Rules 14(b) and (c) of the Regulations for Medical Services of the Armed Forces-1982 and Rules 5 & 9 of the Entitlement for Casualty Pensionary Awards, 1982. It is further prayed that Petitioner may be granted disability pension @ 50% with effect from 1<sup>st</sup> August 2007 with interest @ 12% per annum on the arrears.

2. Petitioner was enrolled in Army on 6<sup>th</sup> August 1985. At the time of enrolment, the Petitioner was put through a medical examination and was enrolled only after found fit in all respects. He has put in 22 years of service and served in various operations all over the country. It is alleged that on

account of military service the Petitioner contacted the disease known as Calcific AS Post AVR, a heart condition, in November 2005 while undergoing Battle Physical Efficient Test (BPET) as a part of the Nk. to Hav. promotion cadre. It was a very tough training and Petitioner used to experience difficulty in breathing with black outs while running or doing strenuous physical work. He underwent Aortic Valve replacement operation in Army Hospital, R& R on 17<sup>th</sup> February 2006. He was placed in low medical category S1H1A1 P-3E (Temporary) on 27<sup>th</sup> April 2006 and was placed in P-3(Permanent) in October 2006. The Petitioner at this stage was eligible for extension of two years but same was denied to him because he was placed under medical category P-3 (Permanent). Petitioner was brought before a Release Medical Board on 20<sup>th</sup> July 2007 which assessed his disability as 40% for life but opined that his disability was not connected with service which according to Petitioner is an arbitrary and perverse opinion. Petitioner's claim for grant of disability pension was rejected by Senior Record Officer, EME, Records because the Release Medical Board had opined that his disability was not connected with service. Ultimately after exhausting all his remedies, the Petitioner approached this Tribunal for aforesaid reliefs.

3. A reply has been filed by the Respondents and the Respondents have contested the matter and stated that disease of the Petitioner is not attributable to or aggravated by the military service. When the matter was placed before us on 28<sup>th</sup> April 2011, we directed as under:

"Let the Medical Board be re-constituted and the Medical Board is directed to give finding after examining the Petitioner with reference to para 22 of

Chapter VI of Guide to Medical Officers, 2002 read with para 423(a) of Regulation for Medical Services of the Armed Forces, 1982. Let the report of the Medical Board be sent to this Tribunal within four weeks.”

4. In pursuance of the directions given by us, the Petitioner was again reviewed by the Medical Board and the Medical Board after re-examining the Petitioner has sent their opinion which has been placed on record by the Respondents and the opinion reads as under:

“The case has been examined in detail in terms of Para 22, Chapter VI, GMO 2002 and Para 423(a) RMSAF 1983. As per Para 22, Chapter VI, GMO 2002 aggravation may be conceded in cases where ID manifests when subjected to exceptional stress and strain of service eg. HAA/field/uncongenial area. Individual was detected to have bicuspid aortic valve in Nov 2005 when he complained of breathlessness following a BPET run. He was detected to have calcification of the valve with aortic stenosis for which he underwent aortic valve replacement in Feb 2006. Bicuspid aortic valve is a congenital anomaly which many a time manifests later in life in the 3<sup>rd</sup>-4<sup>th</sup> decade. In this case the disease has manifested in the 4<sup>th</sup> decade in its natural course while he was posted to a peace station and after detection he continued to serve in a sheltered appointment in peace station till his release from service. He received definitive surgery without any delay, there was no post operative complication and at the time of release and at present he continues to have good effort tolerance. Being a congenital anomaly there is



no causal connection of ID with military service. BPET has only resulted in early detection of the disability and in no way contributed to the disease progress or its consequences. In this case, there is no close time association of ID with service in HAA/field/uncongenial area, he has received adequate treatment and the results of the treatment are satisfactory hence it is felt that there has been no worsening/aggravation of his condition due to military service. In view of the above ID is considered as neither attributable to nor aggravated by service."

5. Learned counsel for the Petitioner has submitted that the Medical Board has not properly assessed the situation and they have gone wrong because the Petitioner has received this disability when he was undergoing BPET and they were persuaded by the Guide to Medical Officers, 2002 in which it is mentioned that it is only because of the high altitude or field or uncongenial area which can be responsible for such disease and it is submitted that he faced the BPET which is very strenuous, therefore, in all fairness it should be conceded that this disease has been attributed to by the military service. In this connection, learned counsel for the Petitioner has also invited our attention to Regulation 173 read with appendix to the Entitlement Rules for the Casualty Pensionary Awards, 1982 and submitted Rule 14(b) and (c) clearly lay down that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. Secondly, if a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease. In pursuance of the directions given

by us Medical Board has sent the report and they have pointed out in the report that in fact the Petitioner while undergoing BPET in November 2005 complained of breathlessness and he was detected to have calcification of the valve with aortic stenosis for which he underwent aortic valve replacement in February 2006. It is further observed that BPET has only resulted in early detection of the disability and in no way contributed to the disease progress or its consequences and, therefore, they concluded that this could not be said to have been aggravated by or attributable to military service.

6. We have bestowed our best of the consideration to the reports of the Medical Board. When Medical Board has categorically stated that this congenital disease is generally detected at a later stage and they have also pointed out that it is not manifested in early stage but later in life in the 3<sup>rd</sup>-4<sup>th</sup> decade and in case of Petitioner it was detected in 4<sup>th</sup> decade in its normal course while he was posted to a peace station. Therefore this disease has not been aggravated by the military service but it has been the physical built of the Petitioner right from its inception and this has only manifested in the 4<sup>th</sup> decade of his life, therefore it was a congenital disease which was there right from inception but detected only in the 4<sup>th</sup> decade. Therefore they concluded that on the basis of that it could not be said that this has been attributed to or aggravated by the military service. We do not find any defect in this report of the Medical Board. It has been laid down by the Hon'ble Supreme Court in the case of **Union of India v. Damodaran A.V. SLP (C) No. 23727 of 2008** that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. We have also considered the para 423 (a) & (c) of the Regulations For the Medical Services of the Armed Forces, 1983.

7. We have gone through the report of the experts which was sought by us and from the report we are of the opinion that we do not find any reason to take a different view of the matter and consequently this petition is dismissed with no order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**February 16, 2012**  
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