

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

17.

O.A. No. 212 of 2011

Ex Hav Chandra Shekhar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. T.N. Saxena, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

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

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

ORDER
24.05.2012

1. Petitioner vide this petition has prayed to quash the stipulation made in the policy instructions dated 29.09.2009 whereby the benefit of disability pension in respect of premature discharge cases have been extended to only those persons who have retired on or after 01.01.2006 completely disregarding the orders passed by the Hon'ble Supreme Court, Hon'ble Delhi High Court and this Tribunal in several matters. It is also prayed to quash the opinion of the Release Medical Board dated 07.11.2003 as it is signed by one officer and is in contravention of medical opinion dated 04.11.2003 of Re-categorisation Medical Board. The only reason given to support the opinion is 'detected in peace station in 1991' is immaterial in view of Regulation 423(a) and there is virtually no opinion as per Regulation 423(d). It is also prayed that directions be issued to the respondents to grant disability pension to the petitioner as per his entitlement with immediate effect and also pay arrears of disability pension with interest of 18% per annum.

2. Petitioner was enrolled in the Army in 1987 in the Corps of Ordnance in medically fit status. During July-September, 1991, petitioner while serving with 2 Training Battalion, AOC Centre, Secunderabad, developed some problems of head-ache. He was admitted in Military Hospital Secunderabad on 12.09.1991 where he was treated and finally he was placed in low medical category CEE (T) for six months w.e.f. 30.09.1991 by a medical board with advice to report at nearest service hospital on 30.03.1992 for review. He was diagnosed as 'Essential Hypertension' and his disability was assessed as 'due to stress and strain of military service'. The Re-classification Medical Board in respect of the petitioner was held at Military Hospital, Secunderabad on 26.10.1993 and he was placed in permanent low medical category BEE(P) w.e.f. 10.10.1993. Thereafter petitioner continued in service from 1993 to 2002 and was promoted up to the rank of Havildar after he was found eligible for the same.

3. During June-July, 2003, petitioner because of compelling domestic circumstances applied for premature discharge from service on compassionate ground while serving at HQ1 Corps. Records Ordnance issued the discharge order dated 19.08.2003 discharging the petitioner from service w.e.f. 30.11.2003 at his own request under the provisions of Army Rules 13(3) (iii) (iv) 1954. The Release Medical Board of the petitioner was held at Military Hospital, Agra and Medical Board recommended his case to be discharged from service in low medical category S1H1A1P2 (P) E1 due to "Primary Hypertension" with 30 per cent disability. PCDA(P), Allahabad issued PPO dated 10.10.2003 granting service pension to the petitioner, however he was not granted disability pension even after the assessment of the Release Medical Board. Thereafter, petitioner filed representation but without any

result. Hence, the petitioner filed the present petition before this Tribunal seeking aforesaid reliefs.

4. Reply has been filed by the respondents and they contested the matter and pointed out that petitioner while in service was suffering with Primary Hypertension disease. The Release Medical Board held on 07.11.2003 has opined that the said invaliding disease was constitutional in nature which was detected in peace station in 1991 and same is neither attributable to nor aggravated by military service.

5. We have heard both the parties and gone through the record. It is true that in 1991 petitioner was found to be suffering from "Hypertension" and it had been said to be aggravated by military service. In 2003, when petitioner sought premature discharge; he was again reviewed by Release Medical Board which has recorded its opinion that disease "Hypertension" was constitutional in nature and is neither attributable to nor aggravated by military service. Once in 1991, petitioner has been detected as suffering from "Hypertension" and that it was aggravated by military service then the Release Medical Board which was held on 07.11.2003 should have explained the reasons that whether petitioner has been suffering from this disease or not. However, medical board straightway opined that this disease was constitutional in nature and was not aggravated by military service.

6. In this connection, our attention has been drawn to a decision of the Hon'ble Supreme Court in the case of **Controller of Defence Accounts (Pension) Versus S. Balachandran Nair (2005) 13 SCC 132** wherein their Lordships after considering Regulation 173 read with para 423 of the Regulation have observed that normally as per the Regulation there is a presumption in favour of the incumbent unless it is rebutted by the medical

authorities explaining why the disease was not detected at the time of initial induction into the service.

7. In the present case, reasons for disease have not been explained and only opined that this disease was constitutional in nature and was not aggravated by military service. We have also held in the case of **Ex. Gnr. Bhudo Singh Chonkar (OA No. 512/2010) decided on 20.04.2011** that *"now in the 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 it is constitutional. This is a total misnomer."*

8. In the present case as well, medical board held on 07.11.2003 opined that this disease was constitutional in nature and was not aggravated by military service. This is a total misnomer. Once it is found by one medical board in 1991 that petitioner is found to be suffering from "hypertension" and it is aggravated by military service and his disability has been assessed to the extent of 30%, in that case when petitioner is not found suffering from the said disease by the medical board held in 2003 then a proper reason should have been given on record.

9. In the present case, authorities have acted in a hasty manner and disposed of the matter only by observing that disease of the petitioner is constitutional. This is not the way to deal with the matter. Once the petitioner is found suffering from "Hypertension", in that case unless the medical board holds otherwise then a proper reason should have been given, it will be presumed that he continues to be suffering from the said disease.

10. In view of above, we set aside the findings of the Release Medical Board held on 07.11.2003 and declare that petitioner is suffering from "Hypertension" which is aggravated by military service. He is entitled to 30%

disability pension and same be released to him for the period of three years from the date of filing of the present petition.

11. Petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 24, 2012
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