

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A. No. 1479 of 2010

Tuesday this the 8<sup>th</sup> day of March, 2011

“Hon’ble Mr. Justice Janardan Sahai, Member (J)  
Hon’ble Lt. Gen. P.R. Gangadharan, Member (A)”

1. Union of India through Ministry of Defence, Government of India, New Delhi.
  2. The Commandant, Field Regiment  
No.262, C/O APO 56
  3. The Controller of Defence Accounts,  
CDA(P) Allahabad. ....Appellant
- By Legal Practitioner Shri S. K. Rai, Sr. Standing Counsel for  
the Central Government.

Versus

Ram Baran, son of Shri Shiv  
Narayan, resident of village  
Bhadari, P.O.Malak Harhar,  
District Allahabad. ....Respondent/Petitioner

By Legal Practitioner Shri Ashok Nath Tripathi, Advocate

ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. The respondent Sepoy in the Indian Army was invalided out of Army service. His claim for disability pension was rejected. He filed a Writ Petition No.45894 of 1993 in the Allahabad High Court challenging the order refusing the disability pension. The case of the

respondent was that the disease Schizophrenia-295 from which he was found to be suffering and which was the ground of his invalidment was attributable to Military service and as such he was entitled to payment of disability pension. The disability was assessed at 50% by the Invaliding Medical Board. Learned Single Judge of the Allahabad High Court allowed the writ petition and directed the respondents to calculate the entire amount of disability pension from 22.02.1985, the date of his discharge, with interest at the rate of 10% per annum. The Union of India challenged the decision of the learned Single Judge by Special Appeal No.445 of 2005(defective). The records of the Special Appeal have been transmitted to the Tribunal in view of the provisions of section 34 of the Armed Forces Tribunal Act,2007. It was found by the learned Judges of the Division Bench on a detailed consideration and interpretation of the provisions of section 34 of the Armed Forces Tribunal Act that a Special Appeal was a proceeding to which section 34 of the Armed Forces Tribunal Act applies and it has therefore to be transferred to the Tribunal.

2. We have heard Sri S.K.Rai, learned Senior Standing Counsel on behalf of the appellant and Sri Ashok Nath Tripathi, learned counsel for the respondent Ram Baran.

3. Before dealing with various submissions made by the learned counsel for the parties, it would be apt to refer to the facts in the context of which these submissions have been made. The respondent was enrolled in the Indian Army on 21.12.1979. At the time of his enrollment he was examined by the Recruiting Medical

Officer and was found in Shape-1. In para 7 of the writ petition it has been pleaded that the respondent was posted at Kargil( J & K) on 16.06.1981 and his posting at Kargil came to an end on 17.07.1983. The respondent was thereafter posted at Meerut. Soon after his posting at Meerut, the respondent was admitted in Military Hospital, Meerut and ultimately an Invaliding Medical Board was held at Bareilly on 28.01.1985, which recommended that the respondent be boarded out, as he was suffering from the disability Schizophrenia-295. On the basis of the recommendation of the Invaliding Medical Board, the respondent was discharged from the Army service on 22.02.1985. The Medical Board found that the disability was neither attributable to nor aggravated by Military service. The disability claim of the respondent was rejected by the CDA (Pension) on 10.10.1985 and communication of the rejection was made to the respondent on 18.11.1985.

4. The learned Single Judge has in a detailed order held that at the time of enrolment when Ram Baran, the present respondent, was examined by the Medical Board, he was not found to be suffering from any disability and no note about the disability either Schizophrenia or of any other mental illness was made by the Recruiting Medical Officer. The learned Single Judge has also found that the present respondent continued to be in sound mental and physical condition, hale and hearty for a period of about five years and it was only after his return from the posting at Kargil that the first symptoms of the disease manifested themselves in the year 1984. The

learned Single Judge found that Entitlement Rules for Casualty Pensionary Awards 1982 have not been complied with, such as Rule 9 under which the claimant is entitled to receive the benefit of reasonable doubt. Learned Single Judge has drawn a presumption under Rule 14(b) that where a disease has led to the individual's discharge, it would ordinarily be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance in Military service. However, if medical opinion holds otherwise then reasons have to be stated that the disease could not have been detected on prior medical examination. Learned Single Judge has also held on the facts of this case that merely because the Medical Board has mentioned that Schizophrenia is a constitutional disease would not disentitle the present respondent Ram Baran to disability pension.

5. Before us Sri S.K.Rai, learned counsel for the appellant submitted that the opinion of the Medical Board is entitled to great weight and has ordinarily to be accepted and it is not for the courts to substitute their own opinion in the matter and as the Invaliding Medical Board has found that the disease Schizophrenia is a constitutional disorder, learned Single Judge has erred in taking a different view.

6. Annexure III to Appendix II of Entitlement Rules for Casualty Pensionary Awards, 1982 deals with Classification of Diseases. The diseases have been categorized in various heads, such as disease affected by climatic conditions, disease affected by stress and strain, disease affected by dietary compulsions and diseases

affected by training, marching, prolonged standing etc. Category F of the Annexure deals with the disease affected by altitude. The said paragraph F is being quoted by us as follows:

"F. Disease Affected by Altitude

1. High altitude pulmonary oedema and pulmonary hypertension.
2. Acute mountain sickness.
3. Psychosis, Psychoneurosis, suicide.
4. Thrombosis."

In MOSBY'S DICTIONARY, THIRD EDITION, Psychosis

has been defined as follows:

*" any major mental disorder or organic or emotional origin characterized by extreme derangement or disorganization of the personality, often accompanied by severe depression, agitation, regressive behavior, illusions and hallucinations that so greatly impair perception, emotional response, and personal orientation that individual loses touch with reality, is incapable of moving normally in society and usually requires hospitalization."*

7. The definition in MOSBY'S DICTIONARY indicates that Schizophrenia is one of the various kinds of Psychosis. It thus appears that Schizophrenia can be caused on account of posting in high altitude areas. It is not in dispute and learned Single Judge has also recorded a categorical finding upon the point that the respondent was posted in high altitude area of Kargil and that posting came to an end on 17.07.1983 and within about a year he was admitted in Military Hospital, Meerut. The copy of the Invaliding Medical Board proceedings has been annexed as Annexure-1 to the Stay Application filed in the Special Appeal. In the column regarding particulars of diseases, wounds or injuries to be given, there is an entry of

Schizophrenia and under the head 'approximate dates and periods treated', the date 11.10.84 to 13.10.84 MH Meerut has been disclosed.

We are in agreement with the learned Single Judge that the respondent was hale and hearty and for the first time symptoms of the disease manifested themselves after a period of approximately five years from the date of respondent's enrolment. The statement of case in Part II of the proceedings of the Invaliding Medical Board contains the opinion of Lt.Col.K.Lalitha Rao, Classified Specialist (Psy) dated 16.01.1985.

In that opinion, the classified specialist has dealt with the history of the illness of the respondent. In the 'family history' the classified specialist has noted that there is no history of the mental illness in the past. The Medical Board has, no doubt, found that the disease is a constitutional one and in answer to the question 'did the disabilities exist before entering service' has answered 'yes' but no material has been given in the Medical Board proceedings to indicate the basis for the Medical Board arriving at the conclusion that the disability existed since before entering into service. Moreover, this observation is not in tune with the observation made by the Classified Specialist, that there was no past history. The Medical Board's opinion also appears to be against the presumption to be drawn under Rule 14(b) of the Entitlement Rules, which provides that if no note of disability has been made at the time a person enters into service, it would be presumed that the disease originated during service. Such a presumption is available in a case where the disease/disability has resulted in the discharge, unless the Medical Board gives reasons that

the disease could not have been detected at the time of entry into service. No such reasons have been given by the Medical Board. The Medical Board, no doubt, has given its opinion that the disease is a constitutional disorder but what is the import and significance of constitutional disorder has to be considered. The Delhi High Court in

*Ex Sepoy Gopal Singh Dadwal Vs Union of India, Mil. L.J.2006 Del*

185 had called for the Specialists to explain the import of constitutional disorder and observed as follows:

*"15. In furtherance to direction of the Court, medical specialists have appeared during the course of hearing of these petitioner. In response to query by the Court, the medical specialists have expressed their opinion that 'constitutional disorder' or 'Constitutional', 'disease' would relate to a situation where the Medical Board is unable to find cause for the disease which a person is suffering from. In those circumstances, it is recorded that the disease is neither attributable nor aggravated by Army service. In other words, if the medical authorities failed to determine cause, Onset or arrive at a definite diagnostic opinion in relation to disease of a member of the force, it is bound to adversely affect the interest of the member in relation to grant of disability pension. According to these experts, the constitutional disorder would normally result in recording of remark 'not attributable to nor aggravated by Military service without any further or proper diagnosis. Butterworths Medical Dictionary defines 'Constitutional' as " - 'Relating to the state of constitution, inherent in the Constitution of mind or body relating to the bodily system as a whole." The expression constitutional disorder to disease would thus have to be understood even in its common parlance as something which is relatable to human mind and/or body. Its existence in either of them could be specifically diagnosed both in relation to cause, time of its existence as well as onset of the disease. This can hardly be termed as just and fair approach in consonance with rules and regulations. The disease like Schizophrenia, Neurosis and other Psychiatric related diseases can be aggravated if not attributable to Army service. It they are constitutional disease or disorders, then they must be relatable to body and/or mind and can be detected by proper diagnose including the time i.e. pre or post joining the Army. It would be required of the authorities concerned to reasonably show on record that such*

diseases or their basic symptoms existed prior, though the disease manifested later or even co-relate the onset of the diseases to a period prior to the joining of service by the petitioner. It is reasonably expected that the medical experts would be able to even trace the cause, origin of the disease as was done in the case of JC 264149 M Ex Naib Sub Marut Sharan Tiwari v Union of India and others, being CWP No. 23320/2005 decided on 13-7-2006."

The Learned Judges went on to hold :

"17. Now, we may refer to a detailed judgment of the same Court titled as *Sugna Ram Panoliya v Union of India and others*, being CWP No.3699/04 where after reference to various rules and regulations and judgments on the subject, the Court held as under :-

'Various Benches of this Court as all other High Courts have taken the view that the diseases like Schizophrenia, Neurosis and Epilepsy etc. are the diseases which are normally attributable to and/or aggravated by Army Service unless there was definite medical evidence on record to show that the onset of such diseases were prior to the joining of Army and was constitutional in the sense that their cause was not known and in all probable possibilities they could relate back to the period prior to the enrollment of the individual in the Armed Forces. A Division Bench of this Court in the case of *Satpal Singh (Mr) v Union of India*, 1999 (4) AD (Delhi) 321 held as under :-

"What sort of Schizophrenia from which the petitioner suffered has also not been indicated by the Medical Board. Hallucination from which such patient suffers are of three types namely : (i) Auditory, (ii) Visual or (iii) Somatosensory, Auditory Schizophrenia occurs when a person imagines that somebody is talking against him. Visual Schizophrenia is when he imagines something like seeking ghosts etc. Nothing has been said that the respondent as to from which category of schizophrenia the petitioner suffered. From whatever category of "Schizophrenia" the petitioner suffered it would have been apparent when he was medically examined in June, 1982 or at any time thereafter. But none of the Medical Boards prior to October, 1990 declared that the petitioner was suffering from "Schizophrenia" or any mental disorder. Therefore, it would not be



correct on the part of respondent to say that petitioner suffered from constitutional disorder. Constitutional disorder would have in some form or the other must have manifested itself. But it did not till October, 1990. Therefore, the rejection on the ground of constitutional disorder cannot be appreciated."

"The Madhya Pradesh High Court in the case of Sub-Lieutenant Chaman Azhah v Union of India and others (2003) 4 SLR 183 held in favour of the petitioner that Psychiatric disorder was attributable or aggravated by Military service. In this case the Court held as under :-

"In Price's Text Book of the Practice of Medicine, learned author Price has discussed the aetiology of "Schizophrenia" as under :-

"The role of genetics is undoubtedly important, but recent observations suggested that although genetic factors may be necessary they are not always sufficient for the occurrence of Schizophrenic illness, environmental influences can also play their part in the casual chain. Recent mental stress may sometimes be the starting point of an attack, but in a considerable proportion of these cases the reported overwork disappointment in love or other painful experiences, is found to have been a product of the already existing illness, or the last of a long series of disturbing events. No recent or remote experience is ever sufficient to account for the illness without regard to intrinsic causes. No matter how searchingly the patient's life be resurrected and analysed, it is scarcely ever possible to discover that anything happened to him with which would have led to his adopting a schizophrenic way of shunning daily life unless he had been somehow, disposed to it from the beginning; although, of course, much may have happened to him that has strengthened and fostered the disposition."

8. The Delhi High Court has also considered and interpreted various decisions of the Apex Court, some of which have been relied upon by the appellants. No doubt, the Apex Court has held that the opinion of the Medical Board is the opinion of specialists and experts in the field and is, therefore, entitled to great weight but it is also well

settled that the strength of an opinion of the expert lies in the reason given by the expert. In the present case no reasons have been given by the Medical Board. It also appears from the scheme of the provisions relating to the grant of disability pension and from the Pension Regulations for the Army, 1961 that the question whether disability pension is to be granted would depend not only upon expert opinion about the clinical aspects of the disease but also on the proper application of the rules relating to grant of disability pension, namely, the Entitlement Rules of Casualty Pensionary Awards, 1982. If the Medical Board has not given reasons or if the opinion is not in consonance with the Entitlement Rules, its opinion would not be binding. It is, no doubt, true that it has been held that the court is not an expert but it is also sometimes said that the court is an expert of experts. In this regard, we would also refer to Rule 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982.

*“9. The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.”*

Rule 20 of the Entitlement Rules is also relevant, which

Reads as under:

*“20. Conditions of Unknown Aetiology: there are a number of medical conditions which are of unknown aetiology. In dealing with such conditions, the following guiding principles are laid down:-*

*(a) If nothing at all is known about the cause of the disease, and presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.*

(b) *If the disease is one which arises and progresses independently of service/ environmental factors, then the claim may be rejected.*"

Rule 9 quoted above was introduced in the Entitlement Rules of 1982. The Rule brings about a change in the burden of proof. In the 1961 Entitlement Rules the burden to prove that the disease is attributable to Military service was upon the claimant. The question has been dealt with in *Baby vs. Union of India, 2003(3) KLT 362*, a Full Bench decision of the Kerala High Court. Cases that have arisen after 1982 have to be dealt with in accordance with this new Rule. The present case is one that has arisen post 1982. The Regional Bench Kochi of the Tribunal has considered all the important cases on the point and has brought out the difference in the approach to be adopted in dealing with pre 1982 and post 1982 cases, vide *Indeenarakshan Nair MP vs. Officer I/C Records ASC Bangalore and others*, T.A.No.17 of 2009, decided on 16.07.2010. Learned counsel for the appellant has placed reliance upon the decision in *Lt.Col.(T.S.) Panchnand Rai vs. Union of India and another (2002) 1 UPLBEC 381, Smt. Kanchan Mala Srivastava and others vs. Union of India and others, 2000 (4) esc 2774(All.) and Union of India and others vs. No.664950 IM Havildar/Clerk S.C.Bagri, (1999) 3 SCC 709*. The decisions cited have been considered by the learned Single Judge also. Bagri's case does not deal with the issue of disability pension. In Panchanand Rai's case (supra) it was held that the question whether the bronchial asthma

from which the petitioner was suffering was on account of Military service is a question of fact. In Kanchan Mala Srivastava's case (supra) the High Court did not consider the impact of new Rule 9.

9. We are thus of the view that the learned Single Judge has not committed any error in arriving at the conclusion that the respondent was entitled to grant of disability pension. However, it has been pointed out by Sri S.K.Rai, learned counsel for the appellant that the learned Single Judge while granting the claim for disability pension has also observed that the order of discharge is invalid. Sri Ashok Nath Tripathi, learned counsel for the respondent also states that it was not necessary for the learned Single Judge to have given the finding regarding validity of the discharge and that the claim of the present respondent is only being pressed in respect of disability pension. The finding of the learned Single Judge regarding validity of the discharge order appears to be inconsistent with the grant of disability pension which can be granted only after discharge and not if the discharge is set aside. In this view, the finding regarding validity of the discharge is set aside. Subject to this modification made by us, this Transferred Application (Appeal) is dismissed.

(Lt. Gen. P.R. Gangadharan)  
Member (A)

(Justice Janardan Sahai)  
Member (J)

RPS/-