

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

TA No. 217 of 2010
(Arising out of CS 226 of 2009)

Joginder Singh	...	Petitioner
v.		
Union of India and others	...	Respondents

ORDER
03.09.2010

Coram : Justice N. P. Gupta, Judicial Member

Lt Gen N. S. Brar (Retd), Administrative Member

For the Petitioner	...	Mr. N.S.Vijayaramia, Advocate
For the Respondents	...	Mr. R. N. Sharma, CGC

Lt. Gen. N. S. Brar (Retd.)

This suit was filed in the Court of Civil Judge (Junior Division), Siwani Camp at Bhiwani and on transfer to this Tribunal is taken up under Section 14 of the Armed Forces Tribunal Act 2007.

The plaintiff, Joginder Singh, was enrolled in the Army in 1988 and discharged in 1989 on medical grounds being a case of 'Neurosis'. His claim for disability pension having been rejected, this suit was filed. Written statement had been filed on behalf of the defendants. The plaintiff had tendered his own evidence and one witness had been produced by the defendants at which stage the suit was transferred.

The plaintiff was enrolled on 29.07.1988 and invalided out of service on 01.03.1989 before completion of his basic training being

in medical category 'EEE' as a case of 'Neurosis(300)'. The claim of the plaintiff is made on the grounds that at the time of recruitment he was thoroughly examined and found medically fit and due to hard training he developed the disease and after treatment was diagnosed as suffering from Neurosis and thereafter discharged from service. The disease developed due to military service and he was therefore entitled to disability pension under Regulation 173 of the Pension Regulations for the Army 1961. However, the claim was wrongly denied by the authorities as being neither attributable to nor aggravated by military service. His appeal dated 01.10.1989 was also rejected. Legal notice dated 31.03.2005 was replied vide letter dated 16.04.2005 but the claim was again rejected.

Learned counsel for the defendants stated that the mere absence of detection of disease at the time of enrolment and its subsequent onset does not constitute attributability to military service. The opinion of the medical board giving the cause of the disease and the circumstances of its onset have also to be taken into account before it can be attributed to military service. He also highlighted that at the time of enrolment a detailed medical examination is neither possible nor is it done. Only a general medical examination is carried out and detecting such latent diseases is not possible.

He thereafter drew attention to the Invaliding Medical Board at Exhibit R 1 and the detailed Summary and Opinion of Specialist in Psychiatry annexed with it. The opinion states that "*This 19 year old recruit with one month of training was found abnormal during recruit training. The patient says he was asymptomatic till Aug 88 when his recruit training started. After 15 days he started feeling*

stress and found it difficult to cope with the hardship of training. He started remembering his home and wanted to go home.” The medical board opined that

“ The disability exists before enrolment but was in quiescent phase and could not be detected by the RMO at the time of enrolment.

A case of Neurosis. He was admitted with abnormal behavior at MH Panaji on 10.9.88 in the form of sleeplessness, excessive worry and suicidal ideation. He also suspected that his food was being poisoned. Psychiatric examination brought out ill-defined hallucinations and occasional irrelevant talk. He showed anxiety, depression and apprehension. Initially treated with antipsychotic and ECT's. On his tfr to CH (SC) Pune on 24.10.88 he showed no psychotic features but he was anxious, worried and mildly depressed with varied somatic complaints. He was treated with anti depressants since then. He showed only partial improvement. Hence recommended for cat EEE.”

It also stated that “the disease was not attributable to service and although constitutional it has been aggravated by the severe stress and strain of military training in the centre”. Being constitutional it could not therefore be attributed to military service as it existed prior to enrolment and such disease would manifest (aggravate) due to military service which it did within 15 days of commencement of training.

Heard the learned counsels for the parties.

It is quite clear from the documents on record that the plaintiff suffered from the disease before his enrolment and the same manifested itself with merely 15 days of training. Such latent disease would obviously display enhanced symptoms consequent to military training which cannot be termed as aggravation due to military service. It was clearly not attributable to military service. The grounds made out for the claim by the plaintiff do not meet the eligibility criteria under the Pension Regulations.

In the facts and circumstances of the case the plaint is dismissed.

There shall be no order as to costs.

[Justice N. P. Gupta]

[Lt Gen N. S. Brar (Retd)]

September 03, 2010
RS