ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

O.A No. 1265 of 2011

Darshan Singh … Petitioner
Vs
Union of India and others … Respondent(s)

For the Petitioner : Ms Balwinder Kaur, Advocate
For the Respondent(s) : Mr. Gurpreet Singh, Sr.PC

Coram: Justice Prakash Krishna, Judicial Member
Lt Gen (Retd) NS Brar, Administrative Member

ORDER
15.01.2014

The facts alleged are that the petitioner was enrolled in the Army as Nursing Assistant on 13.10.1971 and invalided out from service on 22.04.1995 after completing 23 years 6 months and 23 days of service (Annexure A1). He was medically fit at the time of recruitment in medical category, AYE. In 1983, he was posted to Sikkim and thereafter to Bareilly. He was promoted to the rank of Naib Subedar in 1992 and posted at Ahmedabad. During this tenure, when the Unit was at Barmairh (Rajasthan) doing training, he suffered from Hypertension and intracerebral haemorrhage. He was brought before a Medical Board in March, 1993 and was placed in temporary medical category, BEE (Annexure A2). Re-categorisation Medical Board was held on 22.08.1994 and he was again placed in temporary medical category, BEE for six months w.e.f. 22.08.1994 (Annexure A3). Since there was no improvement in his disability, the Invaliding Medical Board was held on 29.03.1995 and he was recommended to be invalided from service which was approved on 08.04.1995. While the previous Medical Board had found his disability to be Essential Hypertension and Intracerebral Haemorrhage, the Invaliding Medical Board declared him to be suffering from alcohol dependence syndrome besides other disability (Annexure A4). The Board assessed the disability at 20%. It is then contended that hypertension and intracerebral haemorrhage was developed during the last two years of his service and he had never suffered from alcohol dependence syndrome. Although the disease is attributable to military service and the petitioner was entitled to disability element of pension, the same was not granted (Annexure A5). Representation was turned down on 02.07.2001 (Annexure A6). Appeal dated 16.10.2010 (Annexure A7) was dismissed on 26.02.2011 (Annexure A8). The case of the petitioner is that the disability was attributable to military service under Rules, 4, 5, 6 and 14 of Appendix II of Entitlement Rules, 1982 and consequently the petitioner was entitled to disability element under Regulation 173 of Pension Regulations for the Army, 1961.

With the above alleged facts, the petitioner seeks directions for grant of disability element of pension with all consequential benefits w.e.f. 22.04.1995.

Written statement has been filed by the respondents and it is stated that the petitioner was enrolled in the Army Medical Corps on 13.10.1971 and invalided out of service on account of Alcohol Dependence Syndrome and Essential Hypertension w.e.f. 22.04.1995 after rendering 23 years 6 months and 9 days of qualifying service. As per opinion of Classified Specialist (Medicine), the petitioner was invalided out on account of alcohol dependence syndrome and Graded Specialist in Psychiatry of Military Hospital, Ahmedabad had opined that "his other illness may be precipitated / aggravated by his alcoholism and the same may be the cause of irregular medication." The Invaliding Medical Board was held at Military Hospital, Ahmedabad on 29.03.1995 and the disability was considered to be neither attributable to nor aggravated by military service and assessed at 20% for two years. The petitioner was not entitled to disability element of pension, the same was not granted. By communication 15.02.1997 he was advised to appeal against the same which was not done. Subsequent appeals and representations were also accordingly disposed of in 2001. The Graded Specialist (Psychiatry) had also recorded, "history of alcoholism since last several years." Unit report reflected 'poor work performance and very often consuming alcohol while on duty, getting intoxicated and found lying outside Unit Lines in intoxicated state. Was staying with his family, has created problems in the JCOs family quarters.' After his initial treatment in the hospital, he was discharged and was brought back by the Military Police in a fully intoxicated state. Then the Medical Board had opined, "JCO of habitual alcoholism, his further retention in service is not recommended as he is unlikely to remain asymptomatic and chances of relapses are quite high." The petitioner does not fulfil the primary conditions under Regulation 173 of Pension Regulations for the Army, 1961 for grant of disability element as the disability was neither attributable to nor aggravated by military service.

Heard the learned counsel for the parties.

The learned counsel for the petitioner made a strong submission that the petitioner had not suffered from alcoholism anytime before the Invaliding Medical Board and there was no previous record of the same. The Invaliding Medical Board had introduced it at the time of discharge. It was also argued that the composite disability should have been assessed at 60% while the board had only assessed it at 20%. Photocopy of the Invaliding Medical Board was produced which shows the attributability and aggravation columns overwritten after erasing the original with whitener.

In view of the above the complete service and medical record of the petitioner was summoned and made available for our perusal. Perusal of the Invaliding Medical Board shows the opinion of the specialist in psychiatry as under

SUMMARY AND OPINION BY MAJOR P SARKAR, GRADED SPL IN PSYCHIATRY, AT MH AHMEDABAD ON 04 MAR 95

"This 42 years old Nb/Sub AMC/QRA with about 23 years of service is a case of Alcohol Dependence Syndrome. He is also an old case of Intracerebral Haemorrhage (Right frontal) and Essential Hypertension since last about 02 years, in low medical categories, under irregular medications and was admitted to this hospital following a generalised seizure on 23/12/94 when his BP was found to be 230/130 mm of Hg. During hospitalisation he was found to be under influence of alcohol on few occasions and like a habitual alcoholic had almost managed to get discharge from hospital, when ultimately referred for psychiatric evaluation as a 'chronic alcoholic'. History of alcoholism since last several years. Unit report reflected poor work performance, depressed and introvert – keeps away from social contact, very often consumes alcohol while on duty and gets intoxicated, found lying outside unit lines in intoxicated state, and as staying with family, he creates problems in JCO's family quarters. Initial physical examination reveals liver 2 cm palpable which gradually regressed. Mental state revealed strong denial, craving rationalisation, continuously seeking opportunity to get out-pass by any means, manipulativeness, lies almost pathologically, lacking remorse, poor response to therapy, went on out-pass after a reasonable duration of hospitalisation and was brought back by CMP in a fully intoxicated state. He was even hiding his old untreated colles fracture left hand, knowing fully well about the same, for early discharge from the hospital. His other illness like CVA, hypertension, colles fracture may be precipitated/aggravated by his alcoholism and the same may be the cause of irregular medication. However, the damaged frontal lobe due to CVA may be the cause of lack of remorse and poor response to psychotherapy. Other cognitive functions are normal. There are no psychotic/depressive elements, Biorhythms are adequate. Essential investigations were all within normal limits. Considering the poor response to therapy, a JCO of habitual alcoholism, his further retention in service is not recommended as he is unlikely to remain asymptomatic and chances of relapse are quite high."

The opinion of the medical specialist reads as under

SUMMARY AND OPINION BY MAJOR M S SIDDIQUI, CLASSIFIED SPL (MEDICINE), AT MH AHMEDABAD ON 06 MAR 95

This serving JCO, is an old case of Essential Hypertension and Intracerebral Haemorrhage, seizure disorder in Cat Bee 6/12 years wef May 94.

He is additionally also a case of Alcohol Dependence Syndrome for which he has been recommended invalidment from service by Psychiatrist.

The individual is asymptomatic, denies any H/O anginas, dyspucea. Last seizure on 23/12/94. Drug compliance had been poor and erratic. He is in MH since Dec 94 and has been reinstituted on anti hypertension and antiepileptic drugs.

Clinically average built, no pallor, no icterus, Pulses -70/. BP-140/92 mm of Hg (No postural hypertension), no respiratory distress, no evidence of CVS decomposition, no outrageous stigmatic of hepetocellular dysfunction. No xenthoma, no xanthalesma, no neurocutanious marker.

The original Invaliding Medical Board shows the attributability and aggravation column entered in ink as 'No' with no overwriting or erasure whatsoever. Copy of the Invaliding Medical Board was not attached with the Original Application. The photocopy of the proceedings produced are clearly not the faithful copy of the original. We leave it at that.

Annexure A2 annexed with the OA is the part medical case sheet related to examination by the specialist for hypertension and cerebral haemorrhage on 04.03.1993 and is not the medical board proceeding for categorisation as averred above. Similarly, Annexure A3 is again the covering page of the categorisation board and the examination report of the specialist related to hypertension. The complete medical board proceedings have not been annexed. The onset of hypertension and alcoholism is recorded as 1993 and 1994. Part II Order dated 05.04.1995 shows the petitioner being admitted in hospital on 23.12.1994 for alcohol dependence ie prior to being invalided out in 1995.

In so far as the Entitlement Rules are concerned, Rule 14 reads as under

> *DISEASES*
> *14. In respect of diseases, the following rule will be observed:-*
>
> *(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.*
>
> *(b) 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. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*
>
> *(c) If the 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 and that the conditions were due to the circumstances of duty in military service.*

Notwithstanding the diseases having arisen in service, it is apparent from the medical board proceedings that the conditions of military service did not determine or contributed to the onset of the disease and that the conditions were not due to the circumstances of duty in military service.

Para 423 of the Regulations for Medical Services 1983, reads as under

> ATTRIBUTABILITY OF SERVICE
> (a) For the purpose of determining whether the cause of a disability or death is or is not attributable to Service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/ Active Service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection it will be

remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/ Active Service areas.

(b) The cause of a disability or death resulting from wound or injury will be regarded as attributable to Service if the wound/ injury was sustained during the actual performance of "duty" in Armed Forces. In case of injuries which were self inflicted or due to an individual's own serious negligence or misconduct, the board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced by subsequent course of the disease, will be regarded as aggravated by the service. 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 Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have risen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/Medical officer will specify reasons for their/his opinion. The opinion of the Medical Board/ Medical Officer, in so far as it related to the actual cause, of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to Service will, however, be decided by the pension sanctioning authority.

From the above it clearly emerges that the petitioner was a case of acute alcoholism with associated problems. The medical board had appropriately opined the disability to be neither attributable to nor aggravated by military service in consonance with the Entitlement Rules. We find no reason to interfere with the same.

The petition is accordingly dismissed.

The original service and medical record is returned to the learned counsel for the respondents.

[Justice Prakash Krishna]

[Lt Gen (Retd) NS Brar]

15.01.2014
RS

Whether the judgment for reference is to be put on internet? Yes