ITEM NO.102 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5140/2011

K. SRINIVASA REDDY Appellant(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

WITH
C.A. No. 2568/2012
(With Office Report)

Date : 09/10/2014 These appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. S.R. Kalkal,Adv.
(CA 5140 of 2011) Mr. Bhaskar Y. Kulkarni,Adv.

(CA 2568 of 2012) Mr. R. Balasubramanian,Adv.
Mr. B. V. Balaram Das,Adv.

For Respondent(s) Mr. R. Balasubramanian,Adv.
Mr. B. V. Balaram Das,Adv.

Mr. S.R. Kalkal,Adv.
Mr. R.C.Kaushik, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed orders.

(Shashi Sareen) (Mahabir Singh) (Veena Khera)
Court Master Court Master Court Master

(Two signed Orders are placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5140 OF 2011

K.SRINIVASA REDDY .. Appellant(s)
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Versus

UNION OF INDIA AND ORS. .. Respondent(s)
.

O R D E R

This appeal arise out of an order dated 01.11.2010 passed by the Armed Forces Tribunal, Regional Bench, Chennai whereby T.A. No. 100 of 2010 filed by the appellant has been dismissed and the claim for payment of disability pension declined.

The appellant was recruited as a Sepoy Driver in the Indian Army on 23.02.1994. He was sent for six months basic training at the ASC Centre at Gaya which he completed satisfactorily. He was then sent to ASC Bangalore for technical training spread over another six months. Even this training was completed by the appellant to the satisfaction of all concerned. In the year 1995 he was posted as a Recruitee Driver at 983,

TPT Company, Bhatinda, Punjab from where he went on annual leave of two months sometime in July, 1995. He returned from Bhatinda to re-join the unit in July, 1995. Upon his return he was found to be incoherent and was therefore sent for medical examination and treatment. The Medical Invalidation Board opined that the appellant was suffering from invaliding disease of Schizophrenia. The Board further opined that the disease was neither attributable nor aggravated by military service. He was accordingly invalidated out from service. A disability pension claim made by the appellant was in due course examined and rejected by the competent authority primarily on the ground that the disease he was suffering from was constitutional in nature and was neither attributable nor aggravated by military service. Aggrieved by the rejection of his claim the appellant filed writ petition No. 18071 of 1999 before the High Court judicature of Andhra Pradesh at Hyderabad. An appeal against the rejection of his claim was also filed by the appellant before the competent appellate authority. The High Court eventually dismissed the writ petition filed by the appellant by

its order dated 02.02.2006 holding that since the Medical Board as an expert body had opined that the disease which the appellant was suffering from was neither attributable nor aggravated by military service, the Court was in no position to sit in appeal over the said opinion or take a different view. The High Court all the same observed that since the appeal filed by the appellant against the rejection of his claim for disability pension was still pending, the Appellate Authority could look into the same in accordance with law. The Appellate Authority accordingly examined the claim made by the appellant and referred the appellant to an Appeal Medical Board who appears to have re-evaluated the appellant but stuck to the opinion given by the earlier medical board to the effect that the appellant was indeed suffering from the Schizophrenia but the same was neither attributable nor aggravated by the Military Service.

Aggrieved by the dismissal of the appeal filed by him, the appellant filed Writ Petition No. 22302 of 2007 before the High Court of Andhra Pradesh at Hyderabad. With the setting up of the Armed Forces Appellate

Tribunal the said petition was transferred to the Tribunal's Regional Bench at Chennai and registered as T.A. No. 100 of 2010. The Tribunal has noticed earlier dismissed the said Transfer Application by the order impugned in this appeal.

We have heard learned counsel for the parties at some length. The material facts are not in dispute. It is not in dispute that the appellant was recruited as a Sepoy Driver after being subjected to prescribed medical tests and examination in which he was not found to be suffering from any invaliding disease like the one that was discovered subsequently. It is also not in dispute that the appellant had completed the prescribed basic training and the technical training satisfactorily and had been posted as a Sepoy Driver where it was for the first time noticed in October, 1995 that he had contracted the disease for which he was treated by the hospital concerned. The Medical Board that assessed the appellant's condition initially at the time of his release from army had while holding that the appellant was suffering from Schizophrenia simply opined that the disease was neither attributable nor aggravated by the

medical service. That opinion or conclusion was unsupported by any reasons. More importantly after the High Court disposed of the first writ petition filed by the appellant and the Appellate Authority directed the Appellate Medical board to re-evaluate the appellant, the Appellate Medical Board also came to the very same conclusion regarding the nature of the disease which the appellant was suffering from. Significantly the Appellate Medical board also did not record any reason for holding that the disease which the appellant was suffering from was not attributable or aggravated by the military service. We therefore have a fact situation in which the person is recruited after being found physically fit in all respects and who completes his training successfully but is subsequent thereto found to have contracted an invaliding disease. The question is whether the disease and consequent disability can be said to have arisen out of military service. The answer to that question must be in the affirmative. We say so on the authority of a decision of this Court in Dharamvir Singh Vs. Union of India and Ors. 2013 (7) SCC 316. That too was a case where the appellant

Dharamvir Singh was found to be suffering from generalised seizure (epilepsy). The Medical Board had opined that the disease was neither attributable nor aggravated by military service. The question which fell for determination was whether the disease could be presumed to be attributable or aggravated by military service. This Court on a conspectus of Casualty Pensionary Awards, 1982, Pension Regulations for the Army, 1961, Guide to Medical Officers (Military Pensions), 2002, & Rule 432 of the Armed Forces Medical Service Regulation summed up the true legal position in the following paragraphs:

"29. A conjoint reading of various provisions, reproduced above, makes it clear that:

29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being

discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been 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 [Rule 14(c)].

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and

29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above (para 27).”

Applying the above tests to the case at hand we find that no disease had been recorded or detected at the time of the appellant's acceptance for military service. The respondent has also failed to bring on record any document to suggest that the appellant was under treatment for any disabling disease hereditary or otherwise. In the absence of any such disabling disease having been noticed at the time of recruitment of the appellant, it was incumbent on the part of the Medical Board to call for the records to look into the same before coming to the conclusion that the disease subsequently detected could not have been detected on medical examination prior to the appellant's acceptance for military service. More importantly in para 29.2 of *Dharamvir Singh's* case (supra) it is stated on principle that a member is presumed to be in sound physical and mental condition at the time of entering service if there is no note or record to the contrary and in the event of his subsequently being discharged from service on medical grounds any deterioration in his health is presumed to be due to service.

As in the case of Dharamvir Singh the appellant was also found to be in sound medical condition when he was recruited as a Sepoy Driver in February, 1994. His subsequent affliction by Schizophrenia which is a

schedule disease according to the relevant Rules must therefore be presumed to be attributable to military service unless that presumption is effectively rebutted by the respondents by cogent reasons to be recorded in writing. No such reasons have been given by the two Medical Boards who evaluated the medical condition of the appellant. All that was stated is that the disease neither attributable nor aggravated by military service. That statement does not in our opinion effectively rebut the presumption in favour of the appellant. Even apart from the presumption and the failure of the respondent to provide cogent reasons to rebut the same, there are indications from the fact as stated by the respondent themselves in their counter affidavit that the disease was not unrelated to Military Service. In para 3C of the said reply affidavit filed by the respondents it is inter alia stated as under:

> **"3(c) The petitioner was admitted at Base Hospital, Delhi Cantt on 21.07.2006 and was kept in day to day observation. As stated by the petitioner and recorded by Resident (Psychiatry) base Hospital, Delhi Cantt, on 26.07.2006, Quote, "the patient was apparently alright till August 1995, when he was preoccupied with his father's illness' – all through the train journey, he lost his bag that contained his uniform. He was reprimanded when he reported in PT dress. He was unable to explain himself properly, so as the patient**

claim, as he was a new recruit, not fluent with Hindi or much English and also due to fear of authorities. The patient was sent for Psychiatric evaluation to Command Hospital, Chandimandir. He would remain quiet over there, also remain preoccupied with his father's illness. He was diagnosed as having Schizophrenia, treated ECT. The patient claims, thereafter, that he does not remain anything for a day. But, again from the next day onwards, he would keep on brooding why was he given ECT. He did not eat properly the whole week. He spent around 40 days in the hospital, in the same state of mind, brooding over family matters. He was boarded out. Though he was prescribed medication, he did not take it later is a symptomatic ever since. The summary and opinion of classified Specialist (Psychiatry) dated 29.07.2006, is enclosed (as Annexure -R3).”

A careful reading of the above would show that even if the disease was triggered in the circumstance set out by the respondents in the passage extracted above it could not be said to be wholly unconnected to military service. The Medical Board in our opinion failed to keep the circumstances which appear to have triggered the disease in mind while holding that the disease was not attributable nor aggravated by the military service. The circumstances sufficiently suggest that the illness of the appellant's father and his commitment to the family on the one hand and the

call of duty on the other played a major role in his contracting the disease that eventually led to his release from Army.

We may also before parting refer to a three Judge Bench decision of this Court in Veer Pal Singh Vs. Secretary, Ministry of Defence 2013 (8) SCC 83 where this Court was dealing with the question whether Schizophrenia could be attributed to military service and whether the opinion of the Medical Board that a disease was not attributable or aggravated by such service could be blindly accepted by the Tribunal. This Court has by reference to medical literature including dictionaries relevant to the disease held that the opinion of the medical board deserved respect but need not always be worshiped.

It was argued on behalf of the respondents that the appellant could be re-evaluated for a third time as was directed in Veer Pal Singh's case. The need for any such exercise is in our opinion obviated by the fact that while Veer Pal Singh case, only one medical board had evaluated the petitioner, in the case at hand the appellant has been examined twice. But on both the

occasions the Medical Board has failed to record any reason to support their conclusion that Schizophrenia was neither attributable nor aggravated by military service.

In the result, we allow these appeals, set aside the order passed by the Tribunal and direct the respondent to grant disability pension to the appellant in terms of the relevant rules expeditiously but not later than six months from the date of this order. Having said so we do not see any justification for interference with the opinion of the Medical Board that the appellant does indeed suffer from Schizophrenia nor is there any reason to find fault with his release from Military Service. The prayer for re-instatement therefore fails and shall stand rejected. The parties are left to bear their own costs.

.....J.
(T.S.THAKUR)

.....J.
(R.BANUMATHI)

New Delhi,
October 09 2014.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.(S). 2568 OF 2012

UNION OF INDIA & ORS. …**Appellant(s)**

Versus

OM PRAKASH …**Respondent(s)**

O R D E R

This appeal arises out of an order dated 29th July, 2010 passed by the Armed Forces Tribunal, Chandigarh Bench, allowing T.A. No.774 of 2010 filed by the respondent and directing release of disability pension in his favour.

We have heard learned counsel for the parties at some length. A reading of the order passed by the Tribunal shows that the Tribunal has while allowing the application for grant of disability pension in favour of the respondent placed reliance upon the decision of a Division Bench of the High Court of Punjab and Haryana in Pooja and others vs. Union of India and others - 2009 (2) RSJ 345. At the hearing before us, Mr. S.R. Kalkal, learned counsel for the respondent, fairly conceded that reliance by the Tribunal upon the decision of Pooja's case (supra) is misplaced inasmuch as the factual

matrix in which the said case was decided, was totally different from the facts of case at hand. Mr. Kalkal submitted that Pooja's case (supra) arose out of the death of an army personnel while he was on annual leave whereas the case at hand arises out of an accident that occurred while the respondent was on casual leave. That apart, there is a major difference in the versions given by the two sides about the incident itself. While according to the appellant, the accident resulting in disability had taken place when the respondent was whitewashing his house during the period he was on casual leave, the respondent's version is that he was on his way to join his duty at the place of his posting when an accident involving a painter engaged by him for the purpose of painting occurred in the process causing a grievous injury to him that rendered him para paraplegie for life. The Tribunal has, it is evident from the reading of the impugned order, failed to determine the factual aspects of the controversy as to the circumstances in which the accident occurred nor has it gone into the question whether there was any causal connection between the accident and the military service of the respondent. In the circumstances, therefore, we find it

difficult to sustain the order passed by the Tribunal. Resultantly, the appeal succeeds and is hereby allowed. The order passed by the Tribunal is set aside and the matter remitted back to the Tribunal for a fresh hearing and disposal in accordance with law. No costs.

.....J
(T.S. THAKUR)

.....J
(R. BANUMATHI)

NEW DELHI
DATED 09th OCTOBER, 2014.