CASE NO.:
Appeal (civil) 762 of 2001

PETITIONER:
Union of India & Ors

RESPONDENT:
Keshar Singh

DATE OF JUDGMENT: 20/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Allahabad High Court dismissing the special appeal filed by the appellant against the order of learned Single Judge. The controversy lies within a very narrow compass i.e. whether the respondent is eligible to disability pension.

Background facts giving rise to the present dispute is as follows:

The respondent was enrolled as Rifleman on 15.11.1976 and was discharged from Army on 18.10.1986. It was found that he was suffering from Schizophrenia and the Medical Board's report indicated his non-suitability for continuance in army. Medical Board opined that the disability did not exist before entering service and it was not connected with service. An appeal was preferred before prescribed appellate authority which was dismissed on 16.4.1989. Respondent filed a writ petition which was allowed by learned Single Judge and as noted above by the impugned judgment the special appeal was dismissed. Both learned Single Judge and the Division Bench held that it was not mentioned at the time of entering to army service that the respondent suffered from Schizophrenia and therefore it was attributable to army service. Both learned Single Judge and the Division Bench referred to para 7(b) of the Appendix II referred to in Regulations 48, 173 and 185 of the Pension Regulations, 1961 to hold that if any disease has led to the individuals discharge it shall be ordinarily deemed to have arisen in the service if no note of it was made at the time of individual's acceptance for military service. Accordingly, it was held that the respondent was entitled to disability pension.

In support of the appeal learned Additional Solicitor General submitted that both learned Single Judge and the Division Bench have lost sight of para 7(c). Both 7(b) and 7(c) have to be read together. They read as follows"

"7 (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.
7(c) If a 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."

There is no appearance on behalf of the respondent.

A bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. An exception, however, is carved out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, clause (c) of Rule 7 makes the position clear that if a 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 are due to the circumstances of duty in military service. There is no material placed by the respondent in this regard. Reference was also made by learned ASG to Pension Regulations for the Army. Rule 173 of such Regulations read as follows:

Primary conditions for the grant of disability pension:

"173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or above.

The question whether a disability is attributable to or aggravated by military service shall be determined under rule in Appendix II.

Relevant portion in Appendix II reads as follows:

"2. Disablement or death shall be accepted as due to military service provided it is certified that \026
(a) The disablement is due to wound, injury or disease which \026

(i) is attributable to military service; or
(ii) existed before or arose during

military service and has been
and remains aggravated thereby;

(b) the death was due to or hastened by-

(i) a wound, injury or disease which
was attributable to military
service, or

(ii) the aggravation by military
service of a wound, injury or
disease which existed before or
arose during military service.

Note: The Rule also covers cases of death
after discharge/invaliding from service.

3. There must be a casual connection
between disablement or death and military
service for attributability or aggravation to
be conceded.

4. In deciding on the issue of entitlement
all the evidence, both direct and
circumstantial, will be taken into account
and the benefit or reasonable doubt will be
given to the claimant. This benefit will be
given more liberally to the claimant in field
service case."

Regulation 423 also needs to be extracted. The same
reads as follows:

"423. Attributability to 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
casual 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 carry the 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 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 duty to an individual's own serious negligence or misconduct, the Board will also comment how far the disability 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 the 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 arisen 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 relates 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.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:-

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it s not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).

In Union of India and Anr. v. Baljit Singh (1996 (11) SCC 315) this Court had taken note of Rule 173 of the Pension Regulations. It was observed that where the Medical Board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court's direction to the Government to pay disability pension was not correct. It was inter alia observed as follows:

"6.....It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made ample clear from clause (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder required to be observed. Clause (c) provides that if a 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.

Unless these conditions satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of Doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service".

The position was again re-iterated in Union of India and Ors. v. Dhir Singh China, Colonel (Retd.) (2003 (2) SCC 382). In para 7 it was observed as follows:

"7. That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability. It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

The above position was highlighted in Controller of Defence Accounts (Pension) and Others v. S. Balachandran Nair (2005 (13) SCC 128).

In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single

Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment already made to the respondent by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs.