HIGH COURT OF DELHI
Bench: Justices Saurabh Banerjee and V. Kameswar Rao
Date of Decision: 11.01.2024

W.P.(C) 15594/2023 & CM APPL. 62394/2023

EX RECT NARESH KUMAR ... Petitioner

VERSUS

UNION OF INDIA AND ORS ... Respondents

Legislation:

Article 226 of the Constitution of India
Pension Regulations for the Army, 1961 (Part-I)
Defence Service Regulation, Regulations for the Army, 1987 (Revised Edition) (VolumeII)

Subject:
Petition seeking issuance of a writ of Certiorari to quash orders denying grant of disability pension to the petitioner, a former Sepoy diagnosed with 'Aortic Regurgitation', and seeking disability pension with arrears from the date of his discharge.

Headnotes:

Petitioner's Enrollment and Medical Condition – Petitioner enrolled as Sepoy on 10.06.1991, diagnosed with ‘Aortic Regurgitation’ within 6 months of training, and discharged on 22.01.1992 due to being placed in Low Medical Category ‘EEE’ with 60% disability – Condition deemed not attributable to Military Service [Para 2].

Initial and Subsequent Legal Actions – Petitioner's appeal against rejection of disability pension dismissed on 20.11.2006 – Filed OA/1449/2022 before AFT in July 2022 seeking disability pension, contending the condition was attributable to military service [Paras 3-5].

Respondents’ Contention – Opposed grant of disability pension based on Rule 173 of Pension Regulations for the Army, 1961 and absence of medical documents, arguing disability neither attributable to nor aggravated by military service [Para 6].

AFT's Decision and Review – AFT dismissed the OA on grounds of delay and latches, and medical condition being congenital – Review against dismissal also rejected [Paras 7-8].

High Court’s Analysis – Petitioner's approach deemed casual, with no valid justification for the delays in legal action – Training period too short to cause condition, and medical condition not attributable to military service [Paras 13-15].

Reliance on Judicial Precedents – Referenced cases including Baljit Singh, A.V. Damodaran, and Narsingh Yadav to uphold the Medical Board's opinion that disability was not attributable to military service [Paras 17-21].

Dismissal of Petition – Considering factual matrix and established law, High Court found no grounds to interfere with AFT's orders – Petition dismissed [Paras 22-24].

Referred Cases:

- Union of India v. Baljit Singh (1996) 11 SCC 315
- Ministry of Defence v. A.V. Damodaran (2009) 9 SCC 140
- Dharamvir Singh v. Union of India (2013) 7 SCC 316
- Narsingh Yadav v. Union of India, (2019) 9 SCC 667
- Keshav Dutt Oli v. Union of India 2023 SCC OnLine Del 5080

Representing Advocates:
Mr. Janak Raj Rana with Mr. Vinod Patidar for Petitioner
Mr. Manoj Kumar Tyagi, Sr. PC for UOI with Major Partho Katyayan for Army/UOI

J U D G M E N T

SAURABH BANERJEE, J.

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of Certiorari and/or any other appropriate order/direction to quash and set aside the order dated 05.07.2023 in OA/1449/2022 and the subsequent order dated 26.08.2023 in RA/30/2023 passed by the learned Air Force Tribunal, Principal Bench [***AFT***], whereby the learned AFT has denied grant of disability pension to the petitioner and has dismissed the review against the said order, and to grant disability pension to the petitioner with arrears w.e.f. the date of his discharge from services i.e., 22.01.1992.

2. Succinctly put, upon being found medically fit by the Recruiting Medical Board, the petitioner was enrolled as a Sepoy in the Kumaon Regiment on 10.06.1991. However, after being admitted to the Hospital within *6 months* of his undergoing training on 03.01.1992, he was found suffering from 'Aortic Regurgitation' and was placed in Low Medical Category 'EEE' with 60% disability. After conducting the Release Medical Board, the petitioner was recommended to be released in the Low Medical Category 'Aortic Regurgitation' for *2 years* with 60% disability not attributable to Military Service. The same resulted in his discharge on 22.01.1992.

3. Thereafter, for the first time in May 2006, after a delay of almost *15 years*, the petitioner sought his medical documents qua the above. Upon receipt thereof, the petitioner preferred an appeal against rejection of disability pension, which was rejected on 20.11.2006 on the ground that as per the remarks of the Invaliding Medical Board (AFMSF-16), the disability which caused the

invalidation of the petitioner had been shown to be existing before entering into service, and hence, the petitioner was not entitled to disability pension.

4. Aggrieved thereby, in July 2022, after a further delay of almost another *15 years,* the petitioner filed OA/1449/2022 [***OA***] before the learned AFT for setting aside of the order dated 20.11.2006 and for grant of disability pension from the date of his discharge from service with interest. The said OA was accompanied with an application being MA No.1877/2022 seeking condonation of delay on the ground that he was unaware of the formulation of the AFT and had immediately approached the AFT on becoming aware of it and since non-grant of pension was a continuing wrong, the delay be condoned.

5. Before the learned AFT, the petitioner primarily contented that the order dated 20.11.2006 was in contravention of ***Dharamvir Singh v. Union of India*** (2013) 7 SCC 316, wherein it was held that if no note of disability has been made out at the time of entrance/ acceptance of an individual in service, any disease which is detected thereafter and leads to discharge and invalidation, such a disease/ deterioration of health is to be presumed to be due to service. Based thereon, it was contended that since the petitioner was in SHAPE-I category at the time of joining service and further since the disease was detected only when he was undergoing rigorous training causing mental and physical stress, the same was attributable to military service and thus the petitioner was entitled to disability pension.

6. Expectantly, the respondents in their counter affidavit opposed the grant of disability pension to the petitioner on the ground that as per Rule 173 of the Pension Regulations for the Army, 1961 (Part-I), the petitioner did not fulfil the primary conditions for grant of disability pension as his disability was neither assessed as being attributable to military service nor aggravated thereby and not connected with service. It was also contended that since the documents qua the petitioner had already been destroyed in accordance with para 595 of the Defence Service Regulation, Regulations for the Army, 1987 (Revised Edition) (VolumeII), on completion of *25 years* of his retention period being a nonpensioner, they were not available and thus the petitioner could not be granted disability pension in absence thereof. Denial of disability pension to the petitioner was also contended on the basis of delay and latches as the petitioner had approached the learned AFT belatedly after *30 years* of his discharge from service.

7. The learned AFT, vide the impugned order dated 05.07.2023, though allowed MA No.1877/2022 and condoned the delay in terms of ***Union of India and***

Ors. v. Tarsem Singh (2008) 8 SCC 648, however, dismissed OA for grant of disability pension to the petitioner primarily on two issues, *firstly*, on the legal issue of delay and latches, holding that not only was there a delay of over *15 years* in approaching the learned AFT after rejection order of 20.11.2006, but overall also, there was a total unexplained and inordinate delay of over *30 years* from the date of discharge of the petitioner from service, and *secondly*, upon appreciation of the facts involved, holding that the petitioner was admittedly diagnosed with 'Aortic Regurgitation' within *6 months* of his commencing training and as the said 'Aortic Regurgitation' was congenital/ constitutional in origin, it could not be attributed to or aggravated by military service as was also opined by the Invaliding Medical Board.

8. The petitioner then filed a Review Petition being RA/30/2023 against the order dated 05.07.2023, however, the same was dismissed vide subsequent impugned order dated 16.08.2023, holding that in terms of the grounds raised for review, no perversity or illegality was found in the order of the learned AFT dated 05.07.2023. Aggrieved therefrom, the petitioner has now filed the present petition.

9. Learned counsel for the petitioner submitted that the impugned orders are liable to be set aside as the learned AFT has failed to consider that the case of the petitioner is fully covered by the judgement in ***Dharamvir Singh (supra)*** as in the case of the petitioner, he was declared fit at the time of joining, and thus any medical condition detected thereafter was attributable to service and thus the petitioner was entitled to disability pension. He also submitted that the petitioner was diagnosed with Aortic Regurgitation only when he underwent training which caused mental and physical strain and resulted in his medical condition and thus the same was attributable to service.

10. Learned counsel for the petitioner further submitted that the learned AFT erred in dismissing the OA on the ground of delay and latches after itself condoning the delay in filing the OA. He lastly submitted that grant of pension is a valuable right which cannot be defeated for the reasons of absence of documents as the lack thereof does not affect the right of the petitioner.

11. Learned counsel for the respondents on the other hand, opposed the present petition, submitting that the learned AFT has rightly held that the petition was liable to be rejected on delay and latches as there was an inordinate delay of over 30 years in approaching the learned AFT. He further submitted that since the medical condition resulting in the petitioner's invalidation and subsequent discharge was constitutional in origin which could not be detected at the time

of joining of the petitioner in service, the same could not be presumed to be attributable to or aggravated by military service. Thus, the petitioner was not entitled to grant of disability pension.

12. This Court has heard the learned counsel for the parties and perused the documents on record and has carefully gone through the judgements cited and relied upon by them.

13. Perusal of the record reveals that the application seeking condonation of delay filed by the petitioner before the learned AFT was only pertaining to the time period with effect from 20.11.2006, when his appeal was dismissed, till the filing of OA before the learned AFT and there was a complete lull for the period prior thereto with effect from 22.01.1992 i.e. his actual date of discharge till the order dated 20.11.2006. As such, *admittedly,* though there was a delay of *15 years* in two phases, firstly w.e.f. 22.01.1992 till 20.11.2006 and secondly w.e.f. from 22.11.2006 till 04.07.2022 i.e. till the filing of OA before the learned AFT, no condonation was sought qua the first phase. Moreover, the condonation of delay of the second phase of *15 years* sought by the petitioner was also bereft of any particulars as there was nothing which kept the petitioner on tender hooks or which prevented him from exercising his rights timely.

14. The petitioner, who joined training for a disciplined force with the fervent hope that he will continue after joining, cannot be expected to take things so lightly, in fact, casually and call upon the learned AFT or this Court to come to his rescue. If the petitioner is permitted to do so, the same shall set a bad example for the other incumbents in future as also a bad precedent for the times to come. This Court is reluctant to do so. In any event, the learned AFT being mindful of having allowed the application for condonation of delay has itself while condoning such delay, specified the two phases and given sufficient reasons to substantiate its finding. This Court is in concurrence with the same and finds no reason for interfering with the same, when the petitioner has neither pleaded nor made out any case seeking condonation of delay in filing OA before the learned AFT, after an unexplained gap of 15 years. In fact, the petitioner has raised the very same contentions which have already been negated by the learned AFT and which have also been dismissed by a subsequent order in the review thereof. It appears that the petitioner by way of the present petition is once again trying to seek review of the same order dated 05.07.2023, which is not permissible in the eyes of law.

15. A careful analysis also reveals that the petitioner had only undergone training for a brief period of almost *6 months* within which he was diagnosed with his

medical condition and was discharged after the Release Medical Board held that since the medical condition of the petitioner being 'Aortic Regurgitation' already existing as it was congenital in nature, the same could not be attributable to military service. In the opinion of this Court, the aforesaid period of *6 months* was too short to cause such mental and physical strain and/ or stress to the petitioner so as to result in his medical condition, for consideration of granting disability pension to the petitioner. More so, whence the petitioner was admittedly not performing/ discharging any kind of field or administrative duties at the relevant time. The term 'training' *per se* in itself meant that the petitioner was supposed to undergo physical endurance all throughout. So, the medical condition of the petitioner cannot be held to be attributable to or aggravated by military service and thus he cannot be entitled to grant of disability pension.

16. In fact, the opinion rendered by Medical Expert(s) in the form of a Medical Report, wherein it was categorically found that 'Aortic Regurgitation' with which the petitioner was diagnosed, was congenital/ constitutional in origin, is undisputed. The absence of the other medical documents which have since been destroyed is immaterial in view thereof and need not be gone into. In any event, it is trite law that this Court ought not to question the views expressed by the Medical Experts, especially as the same have been rendered after due examination by experts in the field.

17. This Court finds able support in ***Union of India v. Baljit Singh***,

(1996) 11 SCC 315, wherein the Hon'ble Supreme Court has held as under:-

> *"**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 a 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 amply clear from clauses (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder require 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 are 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 and 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….."

18. This Court also finds able support in ***Ministry of Defence v. A.V. Damodaran***, (2009) 9 SCC 140, wherein the Hon'ble Supreme Court has held as under:-

*"**35.** In Controller of Defence Accounts (Pension) v. S. Balachandran Nair [(2005) 13 SCC 128 : 2006 SCC (L&S) 734] and the decision in Union of India v. Baljit Singh [(1996) 11 SCC 315 : 1997 SCC (L&S) 476] held that the Medical Board's opinion to the effect that illness and disability suffered by the respondent therein was not attributable to military service cannot be substituted by the court in order to arrive at a contrary finding. It was also held that where a 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."*

19. Lastly, though learned counsel for the petitioner has argued that the petitioner's case is squarely covered by the judgment in ***Dharamvir Singh (supra)***, however, this Court is unable to agree with the submissions made by the learned counsel for the petitioner primarily as the Hon'ble Supreme Court has held as under:-

*"**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 nonbattle 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)**.*

xxx xxx xxx

***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)]**. xxx xxx xxx*

***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)]**;"*

(emphasis supplied)

20. In fact, the Hon'ble Supreme Court has recently in ***Narsingh Yadav v. Union of India***, (2019) 9 SCC 667, clarified the situation qua grant of disability pension to a large extent after holding as under:-

*"**15.** We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.*

***16.** Annexure I to Chapter IV of the Guide to Medical Officers (Military Pensions), 2002 — "Entitlement : General Principles" points out that certain diseases which may be undetectable by physical examination on enrolment including the mental disorders; epilepsy and relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including epilepsy and mental disorder, therefore, we are unable to agree that mere fact that schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.*

xxx xxx xxx

***18.** Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.*

xxx xxx xxx

***20.** In the present case, Rule 14(d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of nondetection of mental disorder, therefore, it cannot be said that schizophrenia is presumed to be attributed to or aggravated by military service.*

***21.** Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the report of the invaliding Medical Board."*

21. Interestingly, the abovementioned judgment has also been relied upon by a Co-ordinate Bench of this Court in ***Keshav Dutt Oli v. Union of India*** 2023 SCC OnLine Del 5080, wherein the Bench dismissed the petition for grant of disability pension, holding that considering that the petitioner had been in service only for about *5 months* and his disability of mental retardation could not be detected at the time of joining and was not attributable to military service, and also that the opinion of the Invaliding Medical Board was not challenged, no case was made out for grant of disability pension.

22. In any event, this Court finds that as per the settled law grant of disability pension is not based on a straight jacket formula and is certainly not a matter of right as it depends upon the factual position involved.

23. Considering the factual matrix of the case, especially where there is no causal connection between the alleged disease and disability arisen and the military service/ training undergone by the petitioner and the settled position of law thereto, this Court finds no infirmity and perversity in the impugned orders passed by the learned AFT, as the petitioner has failed to make out any case for grant of disability pension. 24. Accordingly, the present petition alongwith the pending application, is dismissed as meritless, leaving the parties to bear their respective costs.