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UNION OF INDIA AND ORS.

v.

KESHAR SINGH

APRIL 20, 2007

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[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Service Law:*

*Pension Regulations, 1961:*

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*Regulation 49, Appendix II, para 7 (c ) read with para 7(b), and Regulation 423—Army—Disability pension—Claim for—Expression “attributable to service”—Connotation of—Rifleman in Army—Discharged on report of Medical Board that soldier was suffering from Schizophrenia—Medical Board also opined that disability did not exist before entering, the service, but was not attributable to military service—Held: In view of legal position and position and opinion of Medical Board, soldier was not entitled to disability pension—Armed Forces—Army—Disability pension.*

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**Respondent was discharged form Army on the report of the Medical Board, which indicated his non-suitability for continuance in the Army as he was suffering from Schizophrenia, and opined that the disability did not exist before entering the service and was not connected with service. His appeal was dismissed by the appellate authority. He filed a writ petition and the Single Judge as also the Division Bench in special appeal, on the strength of para 7(b) of Appendix II referred to in Regulation 48 of the Pension Regulations, 1961, held that the respondent was entitled to disability pension.**

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**In the appeal filed by the Union of India, it was contended that the High Court lost sight of para 7(c) of Appendix II and Regulation 423 of the Regulations.**

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**Allowing the appeal, the Court**

**HELD: 1.1. Clause (c) of Para 7 of Appendix II referred to in Regulation 48 of the Pension Regulations, 1961 makes the position clear that if a disease is accepted as having arisen in service it must also be established that the**

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conditions of military service determined or contributed on 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. A

[Para 5] [411-C]

1.2. Further, Regulation 423 explains the terms “attributable to service” and lays down that 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 conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. It is essential to establish whether the disability or death bore a casual connection with the service conditions. 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. In the instance case, opinion of the Medical Board was clearly to the effect that the illness suffered by the soldier was not attributable to the military service. B C

[Para 7 and 11] [412-C-D; E; 413-C; F; 415-G] D

1.3. In view of the legal position and the opinion of the Medical Board, both the Single Judge and the Division Bench of the High Court were not justified in their respective conclusions. 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. [Para 11] [415-G] E

*Union of India and Anr. v. Baljit Singh*, [1996] 11 SCC 315; *Union of India and Anr. v. Dhir Singh Chana, Colonel (Retd.)*, [2003] 2 SCC 383 and *Controller of Defence Accounts (Pension) and Ors. v. S. Balachandra Nair*, [2005] 13 SCC 128, relied on. F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 762 of 2001.

From the Judgment and Order dated 22.09.1998 of the High Court of Judicature, at Allahabad in Special Appeal No. 812 of 1998.

R. Mohan, A.S.G., V. Mohana, Rajni Singh, R.C. Kathiya and B.V. Balaram Das for the Appellants. G

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment H

A 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.

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

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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

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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

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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.

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3. 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"

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"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.

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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

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were due to the circumstances of duty in military service.”

4. There is no appearance on behalf of the respondent.

5. 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.

6. 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

(a) The disablement is due to wound, injury or disease which

(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

A 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/invalidating from service.

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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.”

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

“423. *Attributability to Service:*

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(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

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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. A
- (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. B
- (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. C
- (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:- D
- (i) AFMS F-81 in all cases other than those due to injuries. E
- (ii) IAFY-2006 in all cases of injuries other than battle injuries. F

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- A (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 is 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).
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C 8. 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:

- D "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
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which contributed to invalidation for the military service”.

9. 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.”

10. The above position was highlighted in *Controller of Defence Accounts (Pension) and Ors. v. S. Balachandran Nair*, [2005] 13 SCC 128).

11. 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.