

VEER PAL SINGH V. SECRETARY, MINISTRY OF DEFENCE, 2013

Ayushi Sharma***INTRODUCTION**

Prudence plays a significant role that does not lose its value in the presence of law. There are numerous regulations and rules governing the pension disputes arising in the Armed Forces, but what makes all the difference is which route has been chosen that led to injustice. The motive behind the grant of Disability Pension is that any injury caused to the service-men, whether permanent or partial and consequently made them unfit for further service, does not go unnoticed.” In 1982, the Supreme Court in *Lt. Col. Prithi Pal Singh Bedi Etc. v. Union of India & Others*¹ had urged the Central Government to take steps to provide for at least one judicial review in service matters, and in 1992, the Estimate Committee of Parliament in their 19th Report desired as much. The then-existing system of administration of justice in these armed services provided for the submission of statutory complaints against grievances relating to service matters and pre and post-confirmation petitions to various authorities against the findings and sentences of courts-martial. The establishment of an independent Armed Forces Tribunal was, thus, conceived to fortify the trust and confidence amongst the members of the three services”². The Ministry of Defence has laid down ‘Entitlement Rules for Casualty Pensionary Awards, 2008’ and ‘Pension Regulations for The Army, 2008’ both of which introduced provisions regarding Disability element in addition to retiring pension to officers retired on attaining the prescribed age of retirement and other post-service benefits. The criteria for granting disability pensions are that the disease or disability must be aggravated by or attributable to military service, and the degree of disability must be assessed at more than 20%. The pivotal role of the Medical Boards, which are the deciding factor for the granting of pensions of varied kinds, one of which is for disability caused by armed personnel. This also implies that one mistake on the part of those constituting the Medical Board can lead to unfairness amongst those deserving of financial aid. The instant case is one among many which faces a delay of over two decades in seeing the face of justice. Emphasis must be placed on thorough research before arriving at a conclusion, and re-consideration or examination of the

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¹ *Lt. Col. Prithi Pal Singh Bedi Etc. V. Union of India & Others* (1982) AIR 1413

² *Union of India & Ors. V. Parashotam Dass* Civil Appeal No.447 Of 2023

orders of such expert authorities must be rejected on only noteworthy grounds; that is one of the many aspects dealt with in the present case.

FACTS OF THE CASE

The present appeal stemmed from the order of the Armed Forces Tribunal, Lucknow Bench, dated 19.12.2011.

Veer Pal Singh, the Appellant, was enrolled in the Army in the 'AYE' Medical Category on 20.6.1972. After about four years, he was admitted to a Military hospital for his treatment of "INTESTINAL-COLIC" in Secunderabad. Consequently, he was placed in the 'CEE' Medical category and was discharged from service by the Invalidating Medical Board on 14.11.1977. The Principal Controller of Defence Accounts (PCDA), Allahabad, rejected his plea for Disability Pension on the ground that his schizophrenic reaction was not 'attributable to military service.' Aggrieved by this, he filed a Writ Petition in Allahabad High Court. He prayed that a fresh Medical Board be constituted to assess his disease and disability. The same was disposed of by the Allahabad High Court directing for representation of the Appellant. The Ministry of Defence had refused to take up his case, stating that it was a case of 'schizophrenic reaction and not lunacy.' The case was transferred to the Armed Forces Tribunal, Lucknow, in 2010. The bench dismissed the Writ Petition and the review application with the view 'observation that the recommendations made by the Medical Board are binding and the same cannot be subjected to judicial review'³ while also referring to the judgment of 'Secretary, Ministry of Defence v. A.V. Damodaran'⁴. Henceforth, these consequent dismissals, in addition to the case pending before the Allahabad High Court, the Appellant deemed fit to approach the Hon'ble Supreme Court for seeking relief, invoking Article 32.⁵

LEGAL ISSUE RAISED

1. Issue the writ of Mandamus directing the respondent to constitute a Medical Board to assess the disease and disability of the petitioner which led to his discharge from service was constitutional in nature or not.

³ (2013) 8 SCC 83

⁴ (2009) 9 SCC 140

⁵ Constitution of India 1950, art 32

2. Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

OBSERVATIONS OF HON'BLE SUPREME COURT

The Court is of the opinion that the observation made by the Invalidating Medical Board is substantially incompatible, and had the Tribunal invested in re-considering the root of the disability; this case would have been settled beforehand. The mere belief that one cannot question the findings of an expert body leads to the aggrieved person paying a high price.

The Medical Examination conducted at the time of enrollment stated that the Appellant was fit in all aspects, including lack of emotional instability or emotional backwardness. After considering the foundation of discharge and refusal of Disability pension, the Court assessed the findings of the Medical Board and the recorded statements of the psychiatrist. What came to light was the fact that in case of lack of evidence, it cannot be considered conclusive for the Medical Board to rely solely on the opinion of the psychiatrist treating the patient.

The Court observed, "The army personnel are bravely defending the country even at the cost of their lives, and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly in respect of their emoluments, pension and other benefits."⁶

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The object sought to be achieved was not to create a class within a class but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14⁷ of the Constitution.⁸

DECISION

The Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to Military Service was binding, and the High Court was not justified in directing payment of disability pension to the respondent.⁹ The Court referred

⁶ Union of India & Anr vs C.S. Sidhu (2010) 4 SCC 563

⁷ The Constitution of India 1950, art 14

⁸ K.J.S. Buttar vs Union of India And Anr (2011) 11 SCC 429

⁹ (2013) 8 SCC 83

to the judgments of Controller of Defence Accounts (Pension) v. S. Balachandran Nair¹⁰ and Ministry of Defence v. A.V. Damodaran.¹¹

The impugned order of the Tribunal was quashed, and the case was directed to the Review Medical Board to uncover any traces of disease that made him unfit for service and if he is eligible for a grant of Disability Pension.

ANALYSIS

A thorough emphasis was placed on the medical dictionaries and medical literature such as Modi's Medical Jurisprudence and Toxicology, National Institute of Mental Health, USA and F.C. Redlich and Daniel X. Freedman in their book titled "The Theory and Practice of Psychiatry" in researching over the disease.

What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.¹²

Expert bodies such as the Medical Boards in the Army are constituted of learned officers with expertise in medical science who are entrusted with great responsibility, which can alter the future of the Army personnel.

The member of the Armed Forces who is claiming disability pension must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from members of such forces.¹³

CONCLUSION

If our post-independence history has highlighted one thing, then inarguably, it is the immense contribution made by the military in nation-building and keeping our country safe, stable, and relatively prosperous despite being located in one of the most dangerous regions in the world.

¹⁰ (2005) 13 SCC 128

¹¹ (2009) 9 SCC 140

¹² (2013) 8 SCC 83

¹³ Union Of India & Ors vs Jujhar Singh 2011 (7) SCC 735

Thus, managing death and disability cases amongst our military personnel in a humane, respectful, equitable and efficient manner assumes great importance. Not only is there a grave impact on the operational capabilities of units when casualties occur, but more importantly, the manner in which they are subsequently treated affects morale and motivation, not only of the affected personnel or their families but also of those serving.¹⁴

Subsequently, through the analysis of the present case, it can be concluded that the observations made by the bench had indisputably set a precedent for all forthcoming applications requesting for review of the orders of Medical Boards and will be treated with due consideration and with a fresh view. It has also thrown light upon the power of Judicial Review of the High Courts and Supreme Court, respectively, which is inclusive of matters relating to the Armed Forces as the army personnel are a citizen of the nation first. In my humble opinion, the underlying issue of the hesitation of Courts and Tribunals in overturning the orders of other competent authorities must be overcome by exhausting the powers enshrined in the Constitution of India. Hence, the applicability of such provisions to their full capacity is the only fair and unbiased approach when treating such sensitive cases. After all, the Indian judiciary is the only organ of the government, which is not limited to the 'Separation of power' to uphold the principles laid down in the Constitution of India.

¹⁴ Brig Deepak Sinha, 'The Army's Disability Conundrum'(Indiandefencereview.com, 23 April , 2024) <<https://www.indiandefencereview.com/spotlights/the-armys-disability-conundrum/>> Accessed on 19th June, 2024