IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

T.A. NO. 23 OF 2010

(Arising out of Writ Petition (C) No. 3009/2003)

P R E S E N T

HON'BLE MR. JUSTICE C.Y. SOMAYAJULU, Member (J)

HON'BLE CMDE MOHAN PHADKE (Retd), Member (A)

Digen Bordoloi,
Village Lathabari,
P.O.Morigaon,
Dist.Morigaon,
Assam

……..Applicant

VERSUS

1. The Union of India
   Through the Secretary,
   Ministry of Defence,
   Government of India,
   New Delhi

2. The Commanding Officer,
   No.1 Military Training Battalion.
   A.M.C. Centre & School,
   Lucknow-2.,
   Uttar Pradesh

……..Respondent (s)

Legal practitioner for:-

Applicant (s)	**Respondent (s)**
Mr.P.K.Tiwari Mr.J.Purkayastha,	Mr. N. Deka, CGSC

Mr.S.K.Das

Date of Hearing : 11.01.2011

Date of Judgment & Order : 31.01.2011

JUDGMENT & ORDER

[Cmde Mohan Phadke]

The petitioner, Shri Digen Bordoloi, was enrolled in the Army Medical Corps on 08 Jul 02 and was discharged from service on 16 Oct 02 on medical grounds vide order dated 16 Oct 02 at Annexure P-1. Certificate, pertaining to his discharge is at Annexure P-2. Aggrieved by his discharge the Petitioner filed the instant Writ Petition, being WP(C) No.3009/2003, in the Gauhati High Court on 23-04-2003 praying for the quashing of the order at Annexure P-1 viz., the Discharge Order, his reinstatement in service in some other branch of the Army and direction to the Respondents to pay disability pension to the Petitioner in terms of Pension Regulations for the Army, 1961.

2. The petitioner's case is that he was enrolled in the Army Medical Corps on 08 Jul 02. Before that, he had, earlier, cleared

the written, physical and medical examination in the Army Recruitment Rally held at Nagaon on 27 Sept 2001. He was then called to report to Shillong on 08 Jul 02 as Recruit General Duty and sent to Lucknow for training alongwith three others. On reporting at Lucknow on 10th July 2002 he was once again medically examined on 11th July 2002 and was, during this examination, declared unfit and finally discharged on 16th Oct 02. The Petitioner has claimed that he is entitled to disability benefits as he was boarded out on medical grounds. More so, when this is viewed in the light of the fact that he was earlier found medically fit in the medical examination held at Nagaon and Shillong. The Petitioner contends that since he was found medically unfit for duties during service as General Duty (GD) Recruit from 08 Jul 02 to 16 Oct 02 he could have been accommodated in some other category. The Petitioner has referred to and relied upon Regulation 173 of the Pension Regulations for the Army, 1961 and Rule 7(b) of Appendix II to the said Army Pension Regulation and cited the following court decisions in his support.

a) 1996 LAB IC 1383(Anil Kr Mishra Vs Union of India and Others)

b) 1997(3) GLT 508(Ghanahyam Sharma Vs Union of India & Others)

3. Having cited the above cases the petitioner has contended, “if he became physically unfit in course of military service for the work of General duty then he could have been accommodated in any other category or branch of the Army and necessary medical examination carried out for the same. However, the petitioner was arbitrarily discharged on ground of disability in the course of training in AMC Centre and School and was declared as a dead-wood even without examining the extent of disability the petitioner suffered and for considering him for appointing in any other category in Army”.

4. The Respondents have, on the other hand, contended that the Petitioner, who was enrolled on 08 Jul 02, suffered from a disability- “Deformities of IP Joint All Fingers (RT) Hand 733”- at the time of enrollment but the said disability could not be detected during the pre-enrolment medical examination due to limited facilities and shortage of time. However, soon after reporting at Recruit Reception Platoon, No1 Military Training Battalion, Lucknow, on 10 Jul 02 he was subjected to the ‘Mandatory Second Medical Examination’ on 11 Jul 02 where the said

deformity in the fingers was discovered. He was then referred to Orthopedic Surgeon, Base Hospital, Lucknow, for expert opinion where “Deformity of IP Joint All Fingers” was confirmed on 13 Jul 02 by Col MS Chabra, Sr. Adviser(Surgical Ortho) of Base Hospital, Lucknow Cant. His case was then recommended to be invalided out of the service. He was consequentially brought before an Invaliding Medical Board which recommended his invalidment from military service and advised the individual about his right of appeal to the Chief Of Army Staff through the President Medical Board within 15 days vide the show cause notice at Annexure IV of the ‘Affidavit in Opposition’ dated 04 Apr 02. The proceedings of the Invaliding Medical Board were approved by the competent medical authority and the Petitioner was invalided out of service in terms of Rule 13(3) Table IV of Army Rule, 1954 for the deformity that was held to be not connected with the military service and for which the Petitioner was considered ‘not entitled’ to any disability benefits. Regulation 173 of the Pension Regulations for the Army (1961) is not applicable to the present case. The ‘Invaliding Medical Board’ had, in it’s proceedings, found that the disability of the Petitioner existed before his enrolment into the Army Medical Corps and was not connected to service. The Invaliding Medical Board had

further found that the disability was neither attributable to nor aggravated by the military Service. The Respondents further contended that as the disability was not considered to be attributable to or aggravated by the military Services, regulation 173 of the Army Pension Regulations is not attracted. By its very nature the disability of the nature of “Deformities of IP JOINT ALL FINGERS (RT) HAND-733” could not have developed within the short time that the Petitioner was in service viz., between 8th July 2002, which is the date of enrolment in Army Medical Corps, and 11th July 2002, which is the day on which the disability was detected, when the Petitioner was subjected to the mandatory second medical examination. The Respondents have added that the Petitioner has not undergone any military training from the date of his enrolment viz., 08 Jul 02 to 11 Jul 02 viz. the date of the mandatory second medical examination when the said disability was detected. The deformity is thus wholly unconnected with the military service and consequently the Petitioner is not entitled to disability pension. Furthermore, the Petitioner did not file any appeal against the finding of the Medical Board even though he was advised to do so.

5. With reference to the cases cited by the Petitioner the Respondents have contended that the said two cases have no

relevance to the facts and circumstances of the present case. The ratio of the case of Anil Kumar Mishra applies only to a case where a person develops physical trouble due to the stress of military service whilst in service. In the present case the Petitioner was suffering from the disability before his enrolment in the Army Medical Corps but this fact was inadvertently missed by the Recruiting Medical Officer. In the 2 days of service the Petitioner did not undergo any military training and the deformity was wholly unconnected to the service.

6. It is apparent from the facts and circumstances of this case that the invaliding disease suffered by the petitioner and discovered on the next day of his joining the Recruit Reception Platoon, No.1 Military Training Battalion, at Lucknow was termed, “Deformity of IP JOINT ALL FINGERS (RT) HAND – 733” by the medical authorities. It was in the nature of a deformity in the finger joints. In other words it was not the result of any injury suffered by the Petitioner whilst in service. As a matter of fact the Respondents have brought out in the affidavit-in-opposition that the individual had not put in any service at all at the time of discovery of the invaliding disease. The Respondents have also clarified that whereas the Petitioner reported at the above Military Training Battalion on 10th July 2002 he was subjected to

the 'Mandatory Second Medical Examination' on the very next day ie.11th July 02 and the disability, in question, was detected. The Respondents have further brought out that the deformity, by its very nature, is such that this could not have developed in 2 day's time. The Respondents have finally referred to and relied upon the opinion of the Invaliding Medical Board which had, in this case, found the invaliding disability to be neither attributable to nor aggravated by the Military Service. This opinion of the Medical Board attained finality as no appeal was filed against it even though the President, Medical Board had, vide his notice dated 19th September 2002 (at Annexure IV of the affidavit-in-opposition), informed the individual that he would be invalided out of service and appeal against the said decision of the Medical Board could be submitted to the Chief of the Army Staff within 15 days of the receipt of the said notice. In response, the Petitioner had, vide the document dated 20.09.2002 which is at Annexure V of the Affidavit-in-Opposition, conveyed his acceptance of the said decision to the authorities on the specified proforma.

7. Having accepted the decision of the Medical Board the Petitioner cannot now question it. Further, as a necessary corollary to this he can also not claim disability pension, to which

a person becomes eligible only in cases where the invaliding disease is considered either attributable to, or aggravated by the military service by the Medical Board or, in an appeal against the decision of the Invaliding Medical Board, the competent authority has conceded attributability/aggravation.

8. It is relevant to note in the above context that disability pension is governed by the Rules contained in Chapter III Section 4 of the Pension Regulations for the Army, 1961.

9. As per regulation 173 of the said Pension Regulations, disability pension is admissible to individual's invalided out of service on account of a disability when such disability is either attributable to or aggravated by the Military Service and is assessed at 20% or over. The said regulation further provides that the question whether the disability is attributable to or aggravated by Military Service shall be determined under Rules contained in Appendix II. Regulation 173 is reproduced below alongwith relevant extracts of the Entitlement Rules contained in Appendix II.

> "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 over.

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

Appendix II

Entitlement Rules

1. With effect from 1st April 1948, in supersession of all previous orders on the subject, the entitlement to disability and family pension, children's allowance and death gratuities will be governed by the following rules. Invaliding from service is a necessary condition for the grant of a disability pension. An individual who at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/Ors/NCs (E) who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharged before the completion of their

engagement will be deemed to have invalided out of service.

2. Disablement or death shall be accepted as due to military service provided it is certified that:-

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

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remain 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.

3. There must be a causal connection between disablement 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 of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.

7. In respect of diseases, the following rules will be observed:

(a) Cases, in winch it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(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.

(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.

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts, in the aetiology of the disease, and of its normal development, to the effect that conditions of service e.g., exposure, stress, climate, etc., may have had on its manifestation. Regard must also be had to the time factor. (Also see Annexure)".

10. It is thus seen that invaliding from service is a necessary condition for grant of disability pension. At the same time for the disablement to be accepted as due to military service it has to be shown that it was either attributable to or aggravated by the military service. In other words there must be ***causal connection*** between the disablement and the military service for the attributability or aggravation to be conceded.

11. In the present case the disability, in question, was detected on the very next day of the petitioner joining service as a recruit.

Besides, the disability was in the nature of deformity which has existed since before his enrolment as per the Medical Board. The Medical Board had also accordingly found it to be neither attributable to, nor aggravated by the military service. Further this decision of the medical authorities became final when no appeal was filed against it despite an opportunity to that effect being given. In the circumstances discharge of the petitioner on medical grounds is considered legal and valid. There is also nothing brought on record that would warrant any change in the decision taken by the competent Medical Authority. The two cases cited by the Petitioner do not lend any support to his case. In the case of **Anil Kr Mishra Vs Union of India and Others** the Petitioner had put in over seven and half years of service when he was placed in Low Medical Category permanently (Category B) for hypertension and subsequently discharged. The Hon'ble High Court observed,

> *"6. After hearing the learned counsel for the parties, I am on the view that the petitioner is entitled for getting the disability pension. The petitioner was at first placed in category A, later on in Category B due to hyper tension and thereafter he was discharged. At the time of recruitment at all stages, he was medically declared fit and as such no other inference can be drawn that he suffered mental illness during the course of his duties when he was in service….."*
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> *"8. A perusal of the above provisions would show that the disease which leads to an individual's discharge is ordinarily deemed to*

have arisen in service if no note of it was made at the time the individual's acceptance for service in the Armed Forces. In the present case, no such note was made at the time of acceptance of the petitioner for service. It is also not the case of the respondents that the disorder could not have been detected on medical examination at the time of recruitment in the army. Under such circumstances, it is very difficult to accept that the petitioner is not entitled to got 20 per cent disability pension and according to the rules, as mentioned above, the petitioner is entitled to get the same in accordance with law. Action of the respondents in not doing the needful cannot be sustained as arbitrary and against pension rules. Now the concept of the pension has been changed as it is not more a bounty but it is a right to property. It is not a charity to be

given by the Government as the employee has earned it by virtue of putting the best period of his life in the service of society. Under Article 41 of Constitution of India, the State is under duty to provide public assistance to disable persons…."

12. In the case before us the invaliding disease was detected on the very next day of his joining the service. Besides, the invaliding disease is in the nature of a deformity which is unconnected to the military service and therefore the decision in the aforesaid case, in which the disease arose several years after joining the service and was of such a nature as is generally affected by the stress and strain of the military service, will not apply to the facts and circumstances of the present case.

13. Similarly, in the case of Ghanashyam Sharma Vs. Union of India and Others the petitioner was enrolled on 21.1.84 in the Indian Army as Class II Wireless Operator and posted at various places in India. At the time of his enrolment the Petitioner was medically examined and found to be fit to be enrolled in the Army. On 20.3.91, i.e., after a service of almost seven years, the Petitioner was examined by four Psychiatrists at Jodhpur and they

issued a certificate of disability and opined that the Petitioner was suffering from neurotic depression. On the basis of this medical report the Petitioner was discharged from service on 21.4.91. His case for disability pension was rejected by CDA Allahabad with the remark that the invaliding disease was not attributable to military service and he was not entitled to pension. In deciding this case the Hon'ble Gauhati High Court, Gauhati observed:-

> *" (7) In this particular case also at the time of enrolment when the petitioner was medically examined no note of the present disease was made in the medical report, and subsequently also there is no medical report to show that the disease could not have been detected on medical examination prior to acceptance for his service. If these things are present, it will be deemed that the disease has not arisen during service. That is not the position in hand. In this particular case only in the affidavit-in-opposition filed by one A.D.A Records and it is stated that the constitutional disability is not related to military service. But there is no medical report to show that this disease is a constitutional disability, Without a medical report the authority cannot decide or come to a finding that this is a constitutional disability, Without a medical report the authority cannot decide or come to a finding that this is a constitutional disability. This is an arbitrary, capricious and whimsical finding by the authority to deprive the petitioner from pension…."*
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> *"(8) In that view of the matter this writ application is allowed and I direct the authority to give to the petitioner the necessary disability pension along with the arrear…"*

14. It may thus be seen that the facts and circumstances in both the cases that have been cited in support are quite different from the facts and circumstances of the present case. In the cases referred to by the Petitioner the individuals, in question, have put in over 6-7 years of service before the invaliding disease was discovered. In the present case that is not the case. On the

contrary, the invaliding disease was detected on the very next day of his joining service as a recruit during the mandatory second

Medical Examination. In view thereof the above cited cases are of no help to the Petitioner.

15. For the aforesaid reasons, the petition is considered to be devoid of merit and, consequently, the petitioner is not entitled to any of the reliefs as prayed for in paragraph 17of the petition.

The petition is accordingly dismissed. There will be no order as to costs.

MEMBER (A) MEMBER (J)