(11) In view of the above, we are of the considered view that the impugned show cause notice Annexure P. 6 and order Annexure P. 16 issued by respondent No. 1 are liable to be quashed and the freedom fighter pension of the petitioner which was initially suspended and thereafter cancelled, deserves to be restored.

(12) The petition is, accordingly, allowed by quashing the impugned show cause notice and order. The respondent-Authorities are directed to restore the pension of the petitioner forthwith, including paying the arrears within two months from the date a copy of this order is received by them.

R.N.R.

Before Hemant Gupta & Mohinder Pal, JJ

NO. 4475333 EX.RECT BALDEV SINGH & ANOTHER,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 7842 of 2007

4th February, 2008

Constitution of India, 1950—Art. 226—Pension Regulations for Army—Reg. 173, Rls 7(b) & 7(c), Appendex II—Enrollment of petitioner as a Soldier in Indian Army—While on military training within six months after enrollment petitioner diagnosed with 'Schizo affective disorder'—Invalidated from military service with 30% disability—Competent authority accepting proceedings of Invalidating Medical Board—Claim for disability pension—Rejection of—Medical Board finding disability was of a constitutional disorder which was neither attributable to nor aggravated by military service—Psychotic disease—Cannot be detected during preliminary examination—Petitioner failing to place any material to show that disease was attributable to or aggravated by military service—Petition dismissed.

Held, that both rules 7(b) and 7(c) have to be read together. A perusal of these provisions makes it clear that 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 in Rule 7(b) itself that 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 on record by the petitioner in this regard nor it has been averred that the same was produced before the Invalidating Medical Board to show that the disease was attributable to or aggravated by military service.

(Para 14)

B.S. Sehgal, Advocate, *for the petitioner.*

Aman Chaudhary, Central Government Standing Counsel for the Union of India.

MOHINDER PAL, J.

(1) Challenge in this petition filed under Article 226/227 of the Constitution of India is to the orders rejecting the disability pension claim of the petitioner.

(2) Brief facts of the case are that the petitioner was enrolled as a Soldier in the Indian Army on January 03, 1997. While undergoing basic military training at the Sikh LI Regimental Centre, he complained of having headache. The case of the petitioner is that while he was undergoing rigorous military training in the month of July, he had fallen on the ground because of intense heat and excessive fatigue. Thereafter, he was got admitted in Military Hospital, Fatehgarh Cantt on March 7, 1997 He was later on transferred to Command Hospital, Lucknow on March 15, 1997. He was diagnosed to have 'schizo affective disorder (ICD-295)'.

(3) The petitioner was invalidated from military service with 30 per cent disability for two years. The proceedings of Invalidating Medical Board were accepted by the competent authority on December 05, 1997.

(4) The disability pension claim of the petitioner was rejected on February 09, 2001, on the reasoning that the disability was of a constitutional disorder, which was neither attributable to nor aggravated by military service. The rejection of disability pension claim was communicated to the petitioner,— vide letter dated November 30, 2001 (Annexure P-1) with an advise to prefer an appeal if he felt, unsatisfied with the decision. The petitioner submitted appeal (Annexure P-2) on December 22, 2001, which was rejected and communication dated January 08, 2004 (Annexure P-3) in this regard was sent to him. Thereafter, the petitioner submitted second appeal (Annexure P-4) on July 05, 2004, which was also rejected holding that the Defence Minister's Appellate Committee did not find any ground to after the decision of the First Appellate Committee and communication dated August 23, 2005 (Annexure P-5) in this regard was sent to him.

(5) In the written statement filed by the respondents, it was stated that only preliminary medical examination is conducted at the time of enrolment. However, psychotic diseases cannot be detected during preliminary examination. In the instant case, disability of the petitioner was detected within six months after his enrolment. The respondents denied that the cause of disability of the petitioner was because of intense summer heat since the same weather was applicable to the other recruits who were undergoing military training. It was pleaded that the petitioner did not fulfil the criteria for disability pension as his disability had not been found attributable to or aggravated by military service by the competent authority.

(6) We have heard Mr. B.S. Sehgal, Advocate, appearing for the petitioner and Mr. Aman Chaudhary, Central Government Standing Counsel, appearing for the respondents and have gone through the records of the case.

(7) While arguing before us, learned counsel for the petitioner has laid stress on the point that at the time of entry into service, the petitioner was hale and hearty and was not suffering from any disease. He argued

that the disease diagnosed as 'schizo affective disorder (ICD-295)' was attributable to military service. In support of his contention, he relied upon the following judgments :—

(i) **Union of India and others** *versus* **Ex-Sepoy Satwinder Singh through his wife Smt. Kulwant Kaur and another (1)** ;

(ii) **A.J.S. Chaudhary** *versus* **Union of India and others (2)** ;

(iii) **717318 'T' Ex-Cpl Singh A.K.** *versus* **Union of India and others,** (Civil Writ Petition 13268 of 1998 decided by this Court on February 09, 1999) ;

(iv) **Randhir Singh Gurra** *versus* **Union of India and others,** Civil Writ Petition No. 2420 of 1994 decided by the Delhi High Court on July 25, 1997) ;

(v) **Bhag Singh** *versus* **Union of India and others (3)** ;

(vi) **Satpal Singh** *versus* **Union of India (4)**

(vii) **Lakhpal Singh Dhaulta** *versus* **Union of India and others (5)** ;

(viii) **Goverdhan** *versus* **Union of India and others, (6)**

(ix) **Inder Datt Sharma** *versus* **Union of India and others,** *(Civil* Writ Petition No. 3345 of 1995 decided by the Delhi High Court on September 26, 1997 ;

(x) **Ex. Cfn. Sugna Ram Ranoliya versus Union of India and others,** (Civil Writ Petition No. 3699 of 2004 decided by the Delhi High Court on July 27, 2006 ;

(xi) **Ex-Sepoy Gopal Singh Dadwal** *versus* **Union of India and others (7)** ;

(xii) **Tarsem Singh** *versus* **Union of India (8)** ; and

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(1) 1998(4) RSJ 467
(2) 1999(1) RSJ 778
(3) 1996(4) RSJ 55
(4) 1999(4) RSJ 657
(5) 1999(4) RSJ 593
(6) 1994(2) SLR 177
(7) 2007(1) SLR 616
(8) 2007(2) RSJ 652

(xiii) **Joginder Singh** *versus* **Union of India and others,** (Civil Writ Petition No. 7323 of 2007 decided by this Court on December 04, 2007.

(8) Learned counsel for the respondents has relied upon the case reported as **Controller of Defence Accounts (Pension) and others** *versus* **S. Balachandran Nair, (9) and Union of India and others** *versus* **Keshar Singh (10).**

(9) In **S. Balachandran Nair's case** (supra), the Apex Court, after referring to its earlier decisions in **Union of India** *versus* **Baljit Singh, (11),** and **Union of India** *versus* **Dhir Singh China, Colonel (Retd.) (12),** held that where 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 cannot direct the Government to pay disability pension. In that case, the respondent was having some kidney complications and the medical authorities found his illness as 'anxiety neurosis'. After prolonged illness, the respondent was boarded out and the medical authorities were of the opinion that he became unfit for continuing in service and was put under the category of 'EEE' meaning 'unfit and useless' and was finally discharge from service.

(10) In **Keshar Singh's case** (supra), the respondent had developed schizophrenia while in military service. The disability did not exist before entering service. The High Court had held the illness to be attributable to Army Service and directed grant of disability pension whereas the Medical Board had given a clear opinion that illness was not attributable to military service. The Apex Court held that both the learned Single Judge and the Division Bench were not justified in their respective conclusion that the respondent was entitled to disability pension. The Apex Court also referred to its earlier decisions in Baljit Singh case (supra), **Dhir Singh China case** (supra) **and S. Balachandran Nair's case** (supra).

(11) In the instant case, as stated above, the petitioner was enrolled as a Solider in the Indian Army on January 03, 1997 and while

(9) 2006(1) SLR 51
(10) 2007(4) SLR 100
(11) 1996(1) SCC 315
(12) 2003(2) SLR 400 (SC)

undergoing basic military training he complained of having headache. He was got admitted in Military Hospital, Fatehgarh Cantt on March 07, 1997. He was later on transferred to Command Hospital, Lucknow on March 15, 1997. The petitioner was diagnosed to have schizo affective disorder (ICD-295)'. Petitioner's case was that he had developed the disease due to excessive fatigue and intense heat. He was invalidated from military service with 30 per cent disability for two years. The proceedings of Invalidating Medical Board were accepted by the competent authority. The disability pension claim of the petitioner was rejected for the reason that his disability was of a constitutional disorder, which was neither attributable to nor aggravated by military service. The petitioner submitted appeal, which was rejected by the First Appellate Committee. Thereafter, he preferred second appeal, which was also rejected holding that the Defence Minister's Appellate Committee did not find any ground to alter the decision of the First Appellate Committee. In these circumstances, the case of the petitioner is squarely covered by the observations of the Hon'ble Supreme Court in **S. Balachandran Nair's case** *(supra).*

(12) The matter can also be examined from another angle by referring to the relevant provisions of the Pension Regulations.

(13) Rules 7 (b) and 7 (c) of Appendix-II, referred to in Regulation 173 of the Pension Regulations reads as under :—

> "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."

(14) Both Rules 7(b) and 7(c) have to be read together. A perusal of these provisions makes it clear that 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 in Rule 7(b) itself that 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. In the instant case, there is no material placed on record by the petitioner in this regard nor it has been averred that the same was produced before the Invalidating Medical Board to show that the disease was attributable to or aggravated by military service.

(15) Regulation 173 of Pension Regulations reads as under :—

"Primary conditions for the grant of disability pension :

173. Unless othrewise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or above."

(16) The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix-II. Relevant portion in Appendix-II reads as under :—

"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 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.

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."

(17) Regulation 423 of the Pension Regulations is also relevant. The same reads as under :—

"423. **Attributability of 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 is to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainly, 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 disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual perfomance of "duty" in armed forces. In case of injuries which were self inflicted or duty to an individual's own serious neligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of 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 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 opnion 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 orginated will be regarded as final. The question whether 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 due to injuries.

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

(f) In case where award of disability pension or reassessment or 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 later case will be furnished on a medical board fom and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air)."

(18) A perusal of the above provisions clearly reveals that under Regulation 173 of the Pension Regulations, disability pension would be computed only when disability has occurred due to wound, injury of 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. It is amply clear from a perusal of clauses (a) to (d) of Regulation 423 of the Pension Regulations, quoted above, that in

respect of a disease the Rules enumerated thereunder are 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 are satisfied, it cannot be said that the sustenance of injury/ disease per se is on account of military service.

(19) In view of the legal position, discussed above, and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the petitioner was not attributable to the military service, we find no merit in this writ petition and dismiss the same. No order as to costs.

R.N.R.

Before M. M. Kumar and T.P.S Mann, JJ

PRINCIPAL, M.D. SANATAN DHARAM GIRLS COLLEGE, AMBALA CITY AND ANOTHER,—*Petitioners*

versus

STATE INFORMATION COMMISSONER, HARYANA AND ANOTHER,—*Respondents*

C.W.P. No. 453 of 2008

14th January, 2007

Constitution of India, 1950—Art. 226—Right to Information Act, 2005—S.2(h)—A Non-Governmental institution receiving 95% aid from Govt.—Whether covered by expression 'public authority' as defined u/s 2(h) of 2005 Act—Held, yes—Provisions of 2(h) include any body owned, controlled or substantially financed or non-government organization substantially financed directly or indirectly by the funds provided by appropriate Government—Order of Commission directing petitioner—College to furnish information under 2005 Act not assailable—Petition dismissed.

Held, that a perusal of Section 2(h) of the Right to Information Act, 2005 makes it clear that the definition of 'public authority' comprises in the