2024:DHC:9374-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 14.10.2024***
Pronounced on: 04.12.2024

\+ W.P.(C) 521/2020
EX U/NVK (ME) PRAVINDERA SHARMA ..... Petitioner

Through: Mr. Ved Prakash, Adv

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Vikrant N. Goyal, Mr. Arpit Kumar & Mr. Aditya Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The petitioner, who was serving as an Uttam Navik (ME) in the Indian Coast Guard till his invalidation from service on 27.08.2013, has approached this Court under Article 226 of the Constitution of India praying to quash the Impugned Orders dated 29.11.2018 and 17.06.2016 as well as to direct the respondents to grant him the Disability pension rounded off to 75% with effect from his date of discharge and to pay the arrears of Disability Pension with interest @ 12% per annum from the date of his discharge with all consequential benefits.

2. Before dealing with the rival submissions of the parties, it would be apposite to note the relevant facts as emerging from the

record. The petitioner joined the Indian Coast Guard on 29.07.2002 and thereafter served as an Uttam Navik. While being in active service, he suffered from two disabilities, *"Recurrent Depressive Disorder ICD No. F 33.1"* (hereinafter as '*first disability*') and *"PIVD L4L5 ICD No. M 51.9"* (hereinafter as '*second disability'*). Notably, the petitioner developed his *first disability* on 15.11.2009 and *second disability* on 09.12.2006.

3. The Medical Board on 17.06.2013 assessed the petitioner's *first disability* at 40% for life, being neither attributable to nor aggravated by service and the *second disability* at 20% for life, conceding it to be attributable to service. The Composite Assessment for both the disabilities was assessed at 50% for life. The Medical Board, thus, recommended that the petitioner is entitled for Disability Pension, on the basis of his *second disability* i.e. *PIVD L4L5 ICD No. M 51.9*, for life. Thereupon, the petitioner, after having rendered more than 11 years of service, was on 27.08.2013 invalidated out of service in the Low Medical Category under Rule 26 of the Coast Guard (General) Rules, 1986. However, the Pension Sanctioning Authority, *vide* Pension Payment Order (PPO) No. PPO/C/CGO/16031/2014 dated 21.03.2014, only granted Invalid Pension as per Rule 38 of CCS (Pension) Rules, 1972.

4. It is the case of the petitioner that he is also eligible for Disability Pension as opined by the Medical Board, in addition to the Invalid Pension as per Rule 9(3A) of Central Civil Services (Extra-Ordinary Pension), ["CCS (EOP) Rules"]. The petitioner in this regard, wrote a letter dated 31.05.2016 enquiring from the respondents

about the grant of Disability Pension. Thereupon, the respondents, *vide* a Bureau of Naviks' letter no. 04760 dated 17.06.2016, reiterated their stand and informed that he would only be granted Invalid Pension. The letter also contained a copy of Medical Board Proceedings. Being aggrieved, the petitioner sent a legal notice-cum-representation/ appeal dated 17.08.2018 for grant of Disability Pension duly rounded off to 75%.

5. The petitioner, having received no response, sent a reminder to the respondents on 26.11.2018. Thereupon, the respondents replied to the petitioner's legal notice *vide* Impugned Letter/Order dated 29.11.2018 whereby his claim for Disability Pension was rejected by the Coast Guard, Headquarters. To seek redressal for his grievances, the petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India.

SUBMISSIONS OF THE PARTIES

6. Mr. Ved Prakash, the learned counsel for the petitioner submitted that the petitioner was recruited in the Indian Coast Guard after a thorough physical and medical examination, wherein he was found physically and medically fit and there is no entry or record to show that the petitioner was suffering from any disease prior to his recruitment. The petitioner developed the *first disability* that is '*Recurrent Depressive Disorder'* on 15.11.2009, after serving for 7 years in the Force, which fortifies the claim that he did not have any pre-existing disease(s).

7. He submitted that in the Armed Forces, stress and strain are a part of the work environment, like it is in the Indian Coast Guard,

where the responsibility is to guard the water boundaries of the country. Moreover, the petitioner was also posted in a Hard Area that is, Port Blair from 01.12.2003 to 18.03.2007, just before developing the *first disability* in 2009.

8. Learned counsel drew our attention to the "*Guidelines for Conceding Attributability of Disablement or Death to Government Service"* contained in the CCS(EOP) Rules, specifically to Rule 3-A (2) and Rule 5 (b) to contend that the Medical Board grossly violated the aforesaid Rules. He submitted that the petitioner was discharged due to the diseases he developed during his active service, and since, the Medical Board has not held that these diseases *"could not have been detected on medical examination prior to acceptance for service*", hence, the *first disability* of the petitioner ought to have been held attributable to service as per the aforementioned Guidelines.

9. The learned counsel submitted that the petitioner was invalidated out of service on account of two disabilities, however, the petitioner was not granted Disability Pension *vide* letter dated 17.06.2016 stating that both the diseases from which the petitioner suffers, are not included in the Schedule 1-A of the CCS (EOP) Rules and hence, he is not entitled for grant of Disability Pension. He further submitted that *PIVD L4-L5* is a form of Lumbago Disease which is mentioned in Paragraph A at SI No. (xiv) of Schedule 1-A. Similarly, the *first disability*, he submitted, comes under Psychosis and Psychoneurosis as can be found in Paragraph B at SI No. (i) of the same Schedule.

10. To further strengthen his aforesaid submission, the learned counsel canvassed another argument that names of all the diseases are not given in the Schedule 1-A of CCS(EOP) Rules, as it is not possible to list all the diseases in these rules. Therefore, he submitted, the said Schedule only provides a classification of diseases which can be contracted by service. Likewise, the Lumbago disease as contained in the said Schedule is interchangeably used for lower back pain. He claimed that there could be several causes for a back pain i.e. Lumbago and hence all those diseases including PIVD L4-L5, which causes lower back pain, come under Lumbago disease. Same would be the position for *Recurrent Depressive Disorder* which is a mental disorder and comes under Psychosis and Psychoneurosis of the aforesaid Schedule.

11. Learned counsel vehemently submitted that the petitioner was invalidated out of service for *Recurrent Depressive Disorder* by holding that the said disorder was neither attributable to nor aggravated by service and hence, he is not entitled for the Disability Pension as per Rule 9 of the said Rules. However, the respondents neither interpreted Rule 9 nor appreciated that the Medical Board has itself held that the *second disability* is attributable to service, for which it had recommended 20% Disability Pension for life to the petitioner.

12. He further contended that the Composite Disability, as opined by the Medical Board, was assessed at 50% for life and as per the Rule 9 (3-A) read with Schedule II of the CCS (EOP) Rules, make it crystal

clear that any percentage of disability from 50% to 75% is to be reckoned as 75% for computing Disability Pension.

13. He further contended that even if it is assumed that the *first disability* is neither attributable to nor aggravated by service, still the petitioner is entitled to the Disability Pension at the rate of 20%, which is to be rounded off to 50% as per the Paragraph 5 of the Schedule II of the CCS(EOP) Rules. The petitioner is currently receiving only Invalid Pension, whereas, he is entitled for Disability Pension as well. He submitted that Invalid Pension is granted in those cases where the disability/disease is neither attributable to nor aggravated by service with a qualifying service of 10 years or more. In the present case, the petitioner's *second disability* is attributable to service and hence, is entitled for Disability Pension.

14. Learned counsel in support of his contentions placed reliance on the following judgements:

- ***Abhai Singh vs Border Security Force,*** W.P. (C) No. 2059/2007 decided on 31.07.2014.
- ***Ram Narain vs Union of India and others,*** CW(P) No. 16319/2012 decided on 28.01.2014 (P&H HC)
- ***Dharamvir Singh vs Union of India & Ors.,*** Civil Appeal No. 4949 of 2013, (2013) AIR SCW 4236.

15. *Per contra*, Mr. Vikrant N. Goyal, the learned counsel for the respondents, while also seeking dismissal of the petition, submitted that the petitioner was invalidated from service in the Medical Category 'S5A5' due to his *first disability*, which is neither

attributable to nor aggravated by service. Therefore, in accordance with Rule 3-A of the CCS(EOP) Rules, Disability Pension was not sanctioned to the petitioner. The Medical Board only gives an opinion, which has to be analysed by Pension Sanctioning Authority as per extant Rules applicable. Medical Board has no authority to interpret Rules of CCS(EOP), nonetheless, the case of the petitioner is not covered under the said rules.

16. Learned counsel submitted that the *second disability* was, however, conceded as being attributable to service. Although, he was fit to serve in the service as he was in a Low Medical Category for this disability, he was invalidated on account of the other disability. He further submitted that an individual may have multiple disabilities at the time of invalidation. It is not incumbent on the Medical Board to invalidate an individual on account of each of the disabilities. Moreover, the Composite Disability is assessed at the time of invalidation, however, as the petitioner's *first disability* had been established as neither attributable to nor aggravated by service by the Medical Board, hence, it was not a case of Composite Disability.

17. It was also submitted that the petitioner's past Medical history and status at the time of joining service has been duly recorded by the Medical Board proceedings and it has ruled out that the disability has any causal connection with service and rendered it not attributable to nor aggravated by service.

18. Learned counsel, while refuting the claim of the petitioner that the *first disability* was due to stress and strain of service, submitted that the summary and opinion of the Classified Psychiatrist of INHS

Asvini reveals that the Psychiatrist evaluation of INHS Sanjivini, Kochi in November, 2009 revealed that the petitioner was suffering from progressive low mood, loss of interest and sleep disturbance. It was also observed that the petitioner was not making any required efforts required to manage the symptoms during the therapy sessions in a healthy manner. Thus, the *first disability* has no causal connection with the service, a condition mandatory under Rule 3-A of the CCS(EOP) Rules.

19. He submitted that the petitioner has been sanctioned Invalid Pension from the date of his invalidation from service, however, the Disability Pension is awarded when the invalidation is due to disablement, which is accepted as being attributable to or aggravated by service in accordance with Rule 3-A of the CCS(EOP) Rules. The petitioner was invalidated on account of a disease which fell in neither category, thus, he is not entitled for Disability Pension. Moreover, the petitioner sent a legal notice after a gross delay of 5 years from the date of his invalidation from service as also took another 2 years to approach this Court by way of the present petition, therefore, the same suffers from delay and laches. Thus, in totality of the aforesaid, the actions of the respondents are just and proper and the writ petition being meritless, deserves to be dismissed.

20. Learned counsel drew sustenance from the decision in ***Uttam Adhikari Surender Singh vs Union of India and Ors***., WP(C) No. 9579/2017 decided on 20.03.2019.

21. In rebuttal, as far as the delay and laches is concerned, learned counsel for the petitioner submitted that there is no delay in filing the

present writ petition as it is a case of pension and the petitioner's right to Disability Pension is being denied every month and thus, leading to the cause of action arising every month thereby, making it a case of continuous wrong, for which he placed reliance on the following judgements:

- ***Ex-Sep Chain Singh vs UOI and Ors.*** Civil Appeal Diary No. 30073/2017.
- ***S.K. Mastan Bee vs General Manager South Central Railway*** (2003) 1 SCC 184.
- ***Union of India vs Tarsem Singh*** (2008) 8 SCC 648
- ***Madhukar vs State of Maharashtra and Ors.*** Civil Appeal No. 4470/2014.
- ***Shiv Dass vs Union of India and Ors*** in Civil Appeal No. 274/2007.

ANALYSIS AND REASONING

22. Having heard the learned counsels for the parties and perused the record, at the outset, the respondents have sought for rejection of the writ petition on the ground of delay and laches and submitted that the petitioner has approached this Court belatedly, thus, the present petition is not maintainable. He further submitted that even though the petitioner had preferred a number of representations before the Department of the respondents, the same would not be an adequate explanation to justify the delay. In this regard, it would be apposite to refer to the decision of the Supreme Court in the case of ***Union of***

India and Ors. Vs. Tarsem Singh (supra), wherein it has been held as under:-

> *"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/ successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)*
>
> > *"31.... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.".*
>
> *5. In M.R. Gupta v. Union of India[2] the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held: (SCC pp. 629-30, para 5)*
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> > *"5. ...The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he*

was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time-barred...."

6. In Shiv Dass v. Union of India[3] this Court held: (SCC p. 277, paras 8 & 10)

"8.... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked,

> *unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.*

x x x x

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition.... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

23. Reference may also be made to the decision of the Supreme Court in the case ***Ex-Sep Chain Singh vs. UOI and Ors. (supra)***, which held as under:-

> *"...we are of the opinion that the aforesaid approach of the Tribunal is clearly erroneous. It was a matter of pension, that too disability pension, which was claimed by the appellant and in a case like this it would be a continuous cause of action simply because of the reason that if pension is due and payable to the appellant, the appellant would be entitled to receive the same every month."*

24. From the above mentioned decisions, it is clear that in service matters when the cause of action subsists, being a continuous wrong, and the administrative action is not affecting the third parties' rights, such a delayed claim may be entertained. In the present case, the petitioner was invalidated out from the service in the Low Medical Category on 27.08.2013 and *vide* PPO dated 21.03.2014, he was only granted Invalid Pension, accordingly, he made a representation for grant of Disability Pension and subsequently sent a legal notice-cum-representation dated 17.08.2018 and also reminders. However, the respondents, *vide* Impugned Order dated 29.11.2018 rejected the claim of the petitioner for grant of Disability Pension and, thereafter, he preferred the present petition on 19.12.2019.

25. In view of the above, the claim of the petitioner cannot be rejected on the ground of delay and laches as being an issue of Disability Pension, it is a continuing wrong and in the present case, does not affect the right of any other individual.

26. Now, we may proceed to examine the submissions made by the parties on the merits of the case. The point falling for consideration before this Court is whether the petitioner, who was invalidated out from service and his *first disability* was held neither attributable to nor aggravated by the service while the *second disability* suffered by him was held on account of his service, is entitled to the Disability Pension.

27. The learned counsel for the respondents submitted that the petitioner was enrolled in the Indian Coast Guard on 29.07.2002 and invalidated out of service on 27.08.2013 as suffering from "*Recurrent Depressive Disorder*", which has not been opined as attributable / aggravated by his service condition by the Medical Board. Accordingly, in view of the opinion of the Medical Board, the petitioner has been sanctioned Invalid Pension from the date of invalidation from the service, however, he is not entitled to Disability Pension, which is awarded when the invalidation is due to disability, which is accepted as attributable / aggravated by the service in accordance with Rule 3-A of the CCS (EOP) Rules.

28. Needless to say that the provisions for Invalid Pension and Disability Pension under the Pension Regulations are beneficial provisions for personnel of the Force. Yet, the same cannot be used to claim benefits, which do not accrue to the Force personnel, unless it is shown that the disability was attributable or aggravated due to service in the Force. No doubt, to determine the question regarding a person in the Force invalidated due to his service conditions, the Court has to necessarily rely upon the expert's opinion rendered by the Medical

Board. However, the question whether the disability is attributable or aggravated to Indian Coast Guard's service is to be determined under the CCS (EOP) Rules.

29. Rule 38 of the CCS (Pension) Rules, 1972 governs Invalidation Pension. As per the GI Department of PGI and PW OM No. 45/86/97-P&PWA dated 08.08.2001, the pensioner to whom the CCS (Pension) Rules applies for obtaining the Invalidation Pension can also avail the Disability Pension available under the CCS (EOP) Rules. It is, therefore, necessary to note the CCS (EOP) Rules to ascertain whether the petitioner is entitled to disability element of the pension. Rule 3-A lays down circumstances where disability or death will be accepted as being caused due to or attributable to Government Service. It reads as under:-

> *"3-A. (1) (a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which-*
> *(i) Is attributable to Government service, or*
> *(ii) Existed before or arose during Government service and has been and remains aggravated thereby.*
> *(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by-*
> *(i) a wound, injury or disease which was attributable to Government service, or*
> *(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.*
> *(2) There shall be a casual connection between-*
> *(a) disablement and Government service; and*
> *(b) Death and Government service,*
> *For attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these Rules."*

30. The '*Guidelines For Conceding Attributability of Disablement or Death to Government Service*' provides that while deciding 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.

31. From the above Rule, it is evident that for acceptance of disablement, it should be attributable to military service or has been or remains aggravated thereby, however, it is immaterial if the disablement existed prior or arose during the service.

32. We find, the parties are *ad idem* that the petitioner was not suffering from any of the two medical conditions when he had entered into the service.

33. In this background, we may also note the findings of the Medical Board proceedings dated 17.06.2013, which is as under:-

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2. Did the disability exist before entering service? *(Y / N / Could be)*
NO

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry?
NO

1. Individual is not entitled for disability / disabilities pension.

Disability 01 Not attributable/ Not aggravated by service.
Disability 02 Not attributable/ Not aggravated by service.

2. Opinion of / assessment by the board is recommendatory in nature and is Subject to acceptance by Pension Sanctioning Authority.

17 Jun 13

(जॉय चटर्जी)
(Joy Chatterjee)
सर्जन कमोडोर
Surgeon Commodore
अधिशासी अधिकारी
Executive Officer

Signature of the President

(e) Do the Medical Board consider it probable that the operation / treatment would have cured the disability or reduced its percentage?

NA

(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment?

NA

(g) Do the Medical Board consider the operation to be dangerous to life?

NA

(h) Do the Medical Board consider individual's refusal to submit to operation / treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended.

NA

6. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows): 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.

Disability (As numbered in Question 1 Part IV)	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100%)	Disability Qualifying for Disability Pension with duration	Net Assessment Qualifying Disability Pension (Max 100%) with duration
RECURRENT DEPRESSIVE DISORDER (CURRENT EPISODE MODERATE) ICD NO F33.1	40% (Forty Percent) Life Long	50% (Fifty Percent) Life Long	PIVD L4-L5 ICD NO M51.9 Life Long	20% (Twenty Percent) Life Long
PIVD- L4-L5 ICD NO M51.9	20% (Twenty Percent) Life Long			

34. The respondents have heavily relied upon the Summary and the opinion of the Lt. Col. KJ Divina Kumar, a Classified Specialist in Psychiatry, INHS Asvini dated 13.05.2013 which reveals that the medical classification of petitioner for *first disability*, that is, *'Recurrent Depressive Disorder current episode moderate'* was reported as S2AS2(S)PMT) and the *second disability*, that is, '*Prolapse Intra Vertebral Disc LV4-LV5'* was reported as S3A2(P)PMT). Composite Medical Category has been opined as S3A2(S&P). The summary prepared by the said Classified Specialist is as under:-

> *"Pshyciatric evaluation*
> *Psychiatric evaluation at INHS Sanjivani, Kochi in Nov 09 revealed insidious onset and progressive low mood,*

loss of interest in activities (work or leisure) and sleep disturbance. He reported feeling on edge often, palpitations, developed a feeling of lethargy and took greater effort and time to complete things. He reported feeling like a failure when compared to his schoolmates of Sainik School who were commissioned officers in various services. He reported feeling irritable, having nothing to look forward to continuing in military service.

The sailor had complained of stiff neck and pain in neck & lumbar region in Dec 2006. Surgical consultation at INHS Dhanvantari & neurosurgical consultation at OH (AF) Bangalore revealed no deformity/ bony tenderness or distal neurosurgical defect. He persisted with complaints of pain. MRI spine revealed degenerative disc disease in LV4-LV5 and mild posterior bulge of 05-6 04-5 without cord/nerve root compression. He was observed in LMC wef Feb 2007. He continued to complain of pain in various reviews thereafter too.

There was no history suggestive of mood disorder in past or in immediate relations**. He was educated upto class XIl in Sainik School and joined Coast guard in 2002. He finished BA in 2007. He married in May 09 and has 02 yrs old daughter. **No marital dysfunction reported by sailor.

He continued to complain of reduced sleep & appetite, sadness of mood and lack of motivation to serve at next recat in Sep 2010. He was found to have recurrence of depressive symptoms. "Psychiatrist augmented Sertraline 1OO mg/day with Doxepin 75mg/day & Propranolol 40mg/day. He claimed apprehensions of returning to unit, had pessimistic and negative cognition. He was offered psychotherapy and medication changed to Venlafaxine (upto 225 mg/day). He was operated for grade 2 hemorrholds and sent on 05 wks sick leave in Nov 10. He was continued in LMC and maintenance antidepressants and medical board held in Jan 2011."

(Emphasis supplied)

35. The Classified Specialist further opined:-

> *"This 30 years old sailor has insidious onset and recurrent episodes of depressive symptomatology and somatic preoccupation requiring multiple hospital admission since 2009. He has pessimistic outlook, negative cognitions and pervasive dysphoria and is demotivated for service despite multiple in patient & outpatient therapy for last 3 and half years.*
> *In view of maladaptive personality traits predisposing him to multiple episodes of depression, sub-optimal response to multiple antidepressant, mood stabilizers and psychotherapy, I recommend him unfit for military service and to be invalided out of service in LMC S5A5 as a case of RECURRENT DEPRESSIVE DISORDER."*

36. The Senior Advisor in Psychiatry on INHS ASVINI on 17.05.2013 concurred with the opinion of Classified Specialist (Psychiatry) dated 13.05.2013.

37. From the aforesaid opinion of the Medical Board, it is evident that the *second disability* was opined to be attributable to service whereas the *first disability* was opined as not attributable to / aggravated by service.

38. Therefore, when it is not recorded at the time of enrolment that the petitioner was suffering from any disability, coupled with the fact that his *first disability* was detected for the first time on 15.11.2009, after more than 6 years of being in service, it can be presumed to have been caused by or aggravated by service. It would be relevant to refer to the decision of the Apex Court in ***Dharamvir Singh vs. UOI (supra)***, wherein the Supreme Court has considered almost all the governing Rules and Regulations and after referring to the same, it summarised the legal position by taking a view that if no note of disability or any disease has been recorded at the time of an

individual's acceptance in service in the Armed Forces and in a case, where no justifiable reasons are put forth by the medical authorities for not being able to detect the disease at the time of initial joining in the military service, the presumption should be that the disability is attributable to or has arisen during the service, with the onus of proof lying upon the employer to prove non-entitlement of the Disability Pension to the claimant. The relevant extract is contained in paragraph 28 of the said decision, which reads as under:-

> *28. A conjoint reading of various provisions, reproduced above, makes it clear that:*
> *(i) Disability pension to 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% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*
> *(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].*
> *(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer.*
> *A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9)*
> *(iv) 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)].*
> *(v) If no note of any disability or disease was made at the time of individual is acceptance for military service,*

> *a disease which has led to an individual is discharge or death will be deemed to have arisen in service. [14(b)]*
> *(vi) 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. [14(b)]; and*
> *(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above.*

39. From a reading of the aforesaid decision of the Apex Court, on which heavy reliance has been placed by the petitioner, it would in itself make it clear that the Courts are to be guided by the opinion given by the Medical Board to draw a conclusion as to whether a disease has any connection with the military service or not, as the Medical Board bases its assessment on the medical investigations and the clinical profile of an individual. However, before the findings of these experts can be relied upon by the Courts, it must be ensured that justifiable reasons have been recorded in support of medical opinions, else such opinions may be amenable to challenge.

40. In the present case, from the Medical Board's opinion, it emerges that no specific reason was assigned apart from recording that the *first disability* of the petitioner is not connected with service *vide* initial Medical Board's opinion dated 15.02.2010. Most importantly, the Classified Specialist (Psychiatry) had found no family or past history.

41. Applying the principle of law as enunciated in the decision of ***Dharamvir Singh vs Union of India (supra)*** to the facts of the instant

case, it is not disputed that the petitioner was SHAPE-I at the time of his enrolment in the service and he was diagnosed with *first disability*, that is, '*Recurrent Depressive Disorder'* on 15.11.2009. His Service postings as emerging from the record, are detailed as below:-

SI No	From	To	Place / Ship
01	29.07.2002	05.08.2002	Rect. Cell (D), Delhi
02	05.08.2002	25.01.2003	INS Chilka, Chilka
03	26.01.2003	18.05.2003	ICGS Varad, Visakhapatnam
04	19.05.2003	30.11.2003	INS Shivaji, Lonavala
05	01.12.2003	13.04.2006	ICGS Akkadevi, Port Blair
06	14.04.2006	18.03.2007	ICGS Kanaklata Barua, Port Blair
07	19.30.2007	23.01.2011	ICGS New Mangalore, New Mangalore
08	24.01.2011	18.03.2012	ICGS Mumbai, Mumbai
09	19.03.2012	27.08.2013	RHQ (W), Mumbai

42. From the aforesaid position, it is evident that for the major part of his service, the petitioner was posted in the Coast Guard ships. It is not disputed that the petitioner was posted in a Hard Area with effect from 01.12.2003 to 18.03.2007 as during this time he served onboard Coast Guard ships in Port Blair.

43. Pertinently, both disabilities of the petitioner have arisen while he was in active service. Therefore, possibility cannot be ruled out, with respect to the *first disability*, that his suffering from stress and strain emerged due to his service conditions thereby resulting in his disability specifically, when the Classified Specialist has opined that the petitioner had no history suggestive of mood disorder in the past or in immediate relations. He even did not face any marital stress. Moreover, his *second disability* was found to be attributable to his service condition, even though, he had been discharged on account of the *first disability*.

44. Notably, the Medical Board has categorically recommended the case of the petitioner for Disability Pension as he had suffered 20% lifelong disability for the *second disability* that is *PIVD L4L5 ICD No. M 51.9.* No cogent reasons have been assigned for not having considered the opinion of the Medical Board for not granting the disability element of pension to the petitioner. It appears that the respondents have only granted Invalid Pension to the petitioner in a mechanical manner without considering the opinion of their own Medical Board which recommended Disability Pension to the petitioner and the respondents simply brushed aside the findings given by the Medical Board.

45. Thus, in absence of any cogent reasons shown by the respondents for not concluding that the *first disability* was attributable to service, it would emerge that the respondents presumed that the petitioner's *first disability* was not due to service**.** The respondents, thus, have miserably failed to discharge the onus of proof that was on them to prove the condition for non-entitlement of the Disability Pension to the petitioner.

46. In the light of the above, indisputably, the petitioner was not suffering from either of the two medical conditions at the time of his being commissioned into the service, therefore, there arises no difficulty in taking a view that the first medical condition, that is, *Recurrent Depressive Disorder* can also be clearly held to be attributable to the service condition. Thus, both the disabilities of the petitioner are held to be attributable to the service. In the light of the above discussion, we find that the Impugned Orders dated 29.11.2018

and 17.06.2016 are not sustainable and the same are liable to be set aside.

47. Having said so, the next point for determination is, the degree of disablement due to both diseases for which the Disability Pension is to be awarded. The CCS(EOP) Rules provide for Composite Pension, the relevant provision is reproduced as under:

> *"(e) Composite assessments:*
> *Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessments. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping."*

48. The opinion of the Medical Board is also relevant which noted that as far as the *first disability* is concerned, it was opined to be 40% disablement and 20% disablement has been recorded in respect of *second disability*. The Composite Assessment of both the disabilities has been opined to be 50% lifelong. The petitioner has claimed that the Composite Disability of 50% be rounded off to 75% and accordingly, disability element of pension at 75% alongwith interest at 12% per annum be granted to the petitioner.

49. To appreciate the said plea of the petitioner, it would be relevant to note the provision in the CCS (EOP) Rules which provide for the computation of the disability element as under:

> *"8. xxxx*
> *(3) The extent of disability or functional incapacity shall be determined in the following manner for purposes of computing the disability element forming part of benefits:-*

Percentage of disability assessed by Medical Board	***Percentage to be reckoned for computation of disability element***
Up to 50 *More than 50 and up to 75* *More than 75 and up to 100*	*50* *75* *100*

50. The Medical Board has assessed the Composite Disability suffered by the petitioner to be 50%. Since the disability is not more than 50%, therefore, it cannot be rounded off to 75% as claimed by the petitioner. We, accordingly, direct the respondents to grant Disability Pension to the petitioner, with an interest @ 8% per annum, by taking his two disabilities at 50% and, accordingly, release pensionary benefits to him within a period of two months from the date of this order.

51. The petition, alongwith pending application, if any, is allowed in aforesaid terms.

SHALINDER KAUR, J

NAVIN CHAWLA, J

DECEMBER 04, 2024
KM/ss