

**(2001) 08 P&H CK 0207**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition 9489 of 2000

Kaur Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Aug. 31, 2001

**Acts Referred:**

- Defence Service Army Regulations, 1987 - Regulation 26

**Hon'ble Judges:** V.K. Jhanji, J

**Bench:** Single Bench

**Advocate:** Sandeep Bansal, for the Appellant; Kamal Sehgal, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

V.K. Jhanji, J.

Present writ petition filed by Ex-Sepoy Kaur Singh is for quashing of orders dated 4.12.1996 and 15.5.2000 whereby his claim for disability pension has been rejected. Prayer has also been made for grant ability pension and invalid pension and other benefits.

2. In brief, the facts are that on 29.7.1985 petitioner was enrolled in Army as Sepoy. He was discharged from Military Service on 19.5.1995 i.e. after rendering service for 9 years 9 months and 20 days on medical grounds. Petitioner applied for disability pension but vide letter dated 4.12.1996 he was informed that disability pension cannot be granted as the case of invalidating him was neither attributable to nor aggravated by Military service. Aggrieved of the same, petitioner filed appeal which was rejected and decision in this regard was conveyed to the petitioner vide letter dated 15.5.2000. According to the petitioner, at the time of enrolment in Army, he was fully fit and no note whatsoever was recorded to the effect that the petitioner was suffering from any disease. Further, according to the petitioner, in January, 1993 while performing his duties, he fell ill and was admitted to 176 Military Hospital, Ganganagar (Rajasthan). The disease of the petitioner was diagnosed as

ANXIETY NEUROIS and Medical Board downgraded his medical category to category BEE for six months. In March, 1995, the Medical Board downgraded petitioner's medical category to "EEE" and recommended that he be invalidated out of service on medical grounds with more than 30% disability. He was diagnosed as a case of "NEUROSIS" and CMS (INV) Seizure. Petitioner submitted that orders of the respondents rejecting his claim are totally illegal and liable to be set aside.

3. Upon notice of the writ petition, respondents in their written statement have admitted that petitioner was enrolled in the Army on 31.7.1985 and after completion of basic military training at The Sikh Regimental Centre, he was posted to 4th Battalion The Sikh Regiment. Petitioner was initially admitted for Psychiatric evaluation at Army Hospital, Delhi Cantt. in January, 1993 with episodes of short lived abnormal behaviour of talking irrelevantly and aimlessly wandering since August, 1992 while serving with Sikh Regimental Centre, Ramgarh Cantt. Further, according to the respondents, petitioner had similar episodes in August, 1992, December, 1992 and January, 1993. Petitioner was examined and investigated in detail by Neurophysician and Psychiatrist. All relevant investigations including EEG, CECT were within normal limits. Psychiatric examination and observation revealed no evidence of Psychosis Organic Brain Impairment. However, petitioner was placed in medical category CEE (Temporary) for Surveillance for 1. CNS (INV) Seizure, 2. Psychiatric Observation with effect from 24th February, 1993 and was advised to take medicines. During the review in September, 1993 petitioner reported recurrence of such transient episodes of abnormal behaviour which was considered to be fugue state by Neurophysician. Psychiatric examination showed no significant abnormality. Petitioner was placed in medical category BEE (Temporary) for 6/12 years for both the disabilities with effect from 13.9.1993, Petitioner's case was, however, reviewed in April, 1994 and was retained in same low medical category for another six months. In September, 1994, petitioner was admitted in 92 Base Hospital for recategorisation where his medical category was reviewed and upgraded to Medical Category "AYE" for Psychiatric Observation but was downgraded to medical category BEE (Permanent) for the disease CNS (INV) Seizure with effect from 15.10.1994 and petitioner was sent to his Unit on 17.10.1994.

4. Further, according to the respondents, because of repeated hospitalisation and frequent episodes, Medical Board in its meeting held on 10.4.1995 recommended his discharge from the Army. Accordingly, petitioner was invalidated with effect from 17.5.1995. Degree of disabilities for both the disabilities of the petitioner i.e. NEUROSIS & CNS (INV) SEIZURE was assessed at 30% for 2 years as psychological/constitutional disorders respectively not connected with military service. Respondents have thus stated that the orders passed in the case of the petitioner rejecting his claim for disability pension are legal and not liable to be interfered with in writ jurisdiction.

5. I have heard the learned counsel for the parties and gone through the record.

6. As per Army Regulations, 1961, one is entitled to disability pension if the disability is assessed at 20% or above and is found to be attributable to or aggravated by military service. The case of the petitioner is that he suffered disability Neurosis Anxiety during the course of his employment with the respondents which is attributable to military Service. On the other hand, respondents have stated that this is not so.

7. Perusal of the record of this writ petition shows that the disability suffered by the petitioner did not exist before entering into service meaning thereby that when he was recruited in the army, he was not suffering from disability on account of which he has been invalidated from army service. Petitioner was enrolled in the Army in 1985 whereas he was found to be suffering from Neurosis Anxiety in the January, 1993 i.e. almost 8 years of his service. It is not the case of the respondents that during this period he was found to be suffering from Neurosis Anxiety or CNS (INV) Seizure. It is true that the Medical Board opined that the disability suffered by the petitioner was psychological and constitutional but from the record, I do not find any material justifying this conclusion. In para 5 of the written statement, respondents have stated that the Classified Specialist (Psychiatrist) viewed the petitioner as a case of NEUROSIS manifesting in depressive features, transients erratic behaviour of aimless wandering away, disinclination towards service, frequently absenting himself apparently developed in a background of environmental stress. Respondents have further stated that despite adequate and prolonged treatment, response was unsatisfactory and opined that the petitioner is unlikely to be a fit and useful soldier and recommended medical category EEE (Psy) for NEUROSIS. The Medical Board had found disability of the petitioner at 30% for 2 years.

8. The stand taken by the respondents in para 5 of the written statement leaves no manner of doubt that the disability suffered by the petitioner was on account of environmental stress during the course of his employment in the Army. Rule 7(b) of Appendix II of 1961 Regulations provides that a disease which has led to an individual's discharge, will ordinarily be deemed to have arisen in service if no note of its was made at the time of individual's acceptance for military service. Admittedly, in the case of the petitioner, there is no such note. Rather, the Medical Board itself opined that the petitioner was not suffering from disability before entering into military service.

9. In *Amrit Singh v. Union of India*, (CWP No. 14042 of 1998) 2001 (1) RSJ 378, order declining disability pension on account of the disease "NEUROSIS" was set aside and the applicant therein was held entitled to disability pension.

10. Likewise, in *Santokh Singh Gill v. Union of India and Ors.* 1992 (3) RSJ 216, learned Single Judge of this Court allowed the claim of the applicant of disability pension though he had been discharged from the army as he was placed in low medical category on account of "NEUROSIS."

11. In view of the above, I am of the view that the petitioner is entitled to disability pension as the disability suffered by him was attributable to military service. Accordingly, this writ petition is allowed and orders dated 4.12.1996 and 15.5.2000 (Annexures P-2 and P-4) respectively are quashed. Respondents are directed to release the disability pension to the petitioner in accordance with law. Petitioner would be entitled to pension with effect from the date of discharge but would only be entitled to arrears for 38 months preceding the date of filing of the writ petition. Respondents are further directed to pay to the petitioner the arrears within three months from the date of fixing disability pension failing which they shall be liable to pay interest at the rate of 9 per cent per annum from the date the arrears, as directed above, became due.

12. No costs.