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**(2001) 09 P&H CK 0136**

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

**Case No:** Civil Writ Petition No. 2992 of 1999

Balwinder Nath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Sept. 10, 2001

**Hon'ble Judges:** J.S. Narang, J

**Bench:** Single Bench

**Advocate:** J.S. Bhatti, for the Appellant; Kamal Sehgal, for the Respondent

**Final Decision:** Allowed

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**Judgement**

J.S. Narang, J.

The petitioner was enrolled in the Army Corps of Signals on 4.11.1980. He had been medically examined and was found fit, as a sequel thereto was placed into medical category "A" AYE. In the said certification, no note or any mention had been made in respect of any disease likely to be contracted subsequently. After the petitioner had put in service for 17 years 27 days, he had been discharged on the ground of having contracted disability by the Invalidating Medical Board vide certification dated 1.12.1997. The invalided disability has been accepted to the extent of 30% for life, i.e. total deafness of right Ear and that the Medical Category of the petitioner was graded as BEE(P).

2. It is the contention of the petitioner that the a foresaid disease was suffered by him during service and that the petitioner has been under treatment at the Military Hospital at Jalandhar Cantt. The disease is attributable to and aggravated by the Military Service. The petitioner put in his claim for granting of disability special family pension and that his claim was set in motion for the disability pension claimed. Finally, a communication dated 27.4.1998 has been received by the petitioner from the concerned quarters (copy Annexure P-1). The claim of disability pension has been rejected holding it to be constitutional in nature and not related to service.

3. Aggrieved of the said decision, the petitioner filed an appeal in May, 1998 before the Secretary, Government of India, Ministry of Defence (Pen A), New Delhi, Despite numerous reminders, the appeal has not been decided. Being aggrieved of inaction on the part of the Appellate Authority, the present petition has been filed.

4. It is the case of the petitioner that he is entitled to disability pension as per provisions of Pension Regulations for the Army-1961, Part I and para 423 of the Medical Regulations. It is averred that according to para 3 of Appendix II of the aforesaid regulations, for entitlement of disability pension, the casual connection between disablement or death and military service for attributability or aggravation is to be considered. In the case of the petitioner, there is a direct relation of disability attributable to the military service, as he had not suffered the said disability at any stage. It is only after putting in 12 years of service that he suffered total deafness of right ear. Reference and reliance has also been placed upon para 7(b) of the aforesaid appendix of the aforesaid regulations. It shall be apposite to notice the same which reads as under:-

"(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 of acceptance for service the disease will not be deemed to have arisen during service."

5. On the other hand, the respondents have contested the claim of the petitioner and have taken preliminary objection to the effect that the appeal filed by the petitioner with the Ministry of Defence is under consideration for final decision and therefore, the petition deserves to be dismissed being premature. It is also pleaded that the petitioner suffered from " MIXED DEAFNESS RIGHT EAR - 385" Since November 1994 and was treated from 4.7.1995 at Military Hospital, Delhi and thereafter at Military Hospital, Jalandhar Cantt from 18.7.1996 to 31.7.1996 for "TOTAL DEAFNESS (RT) EAR -389". As per the summary of opinion of the qualified specialists attached with the Release Medical Board Proceedings, the petitioner was recommended fit to be released in Medical Category BEE (Permanent). The percentage of disability of the petitioner was assessed as 30% for two years. It is further the case of the respondents that the disability of the petitioner was assessed neither attributable to nor aggravated by Military Service but constitutional in nature and not related to service.

6. Learned counsel for the petitioner has argued that the apex Court categorically held in re: Vir Yagya Dull Sharma Versus Union of India and others 2000(2) SCT 801.

If any disease is stated to have been suffered by the claimants during the course of service, it shall be termed that it is attributable to or aggravated by Military Service unless the same is disproved by the opinion of the medical Board. It has also been

argued that the respondents have not denied categorically, while submitting reply, to the effect that the petitioner was placed in Medical Category "A" at the time of being enrolled into the Defence Services. It has also been categorically admitted that he was subjected to medical treatment in the year 1994 and he continued to be under such treatment upto 31.7.1996 and he was recommended and that the percentage of disability of the petitioner has been assessed at 30%. The petitioner still suffers from the said disability. Reliance has also been placed upon a judgment of this Court rendered in re: Onkar Singh Union of India and Ors. (C.W.P.NO. 2556 of 1994) decided on 6.8.2001 and also rendered in re: Major A.K.Bawa versus Union of India(C.W.P.No. 7353 of 2000) decided on 25.7.2001.

7. It has also been argued that by terming it to be constitutional in nature and not related to service without giving reasons would not make it not attributable to or aggravated by Military Service. The respondents have not been able to substantiate their claim in this regard by way of producing any documentary evidence, as such, disability suffered by the petitioner has to be termed as having been attributable to or aggravated by military service.

8. Learned counsel for the respondent has argued that unless and until it is accepted by the Medical Board that the disability suffered is attributable to or aggravated by Military Service and the reasons in respect thereof are spelt out by the Board, it cannot be termed as such. It has also been argued that the petitioner was given the shelter appointment and that by accepting this shelter appointment he has no right to claim Disability Pension as he has not been invalided out of service.

9. So far as pendency of appeal before the Ministry of Defence is concerned, it has not been brought to my notice by the counsel for the respondents as to whether the said appeal has been decided or has not been decided. The written statement was filed by the respondents which is dated 13.10.1999. If the appeal has not been decided for such a long period, it is taken to be dismissed. As such, I have proceeded to decide this petition on merits.

10. I have heard the rival contentions of learned counsel for the parties. I am of the opinion that in view of the pension rules and the facts discernible from the pleadings of the petitioner, it is admitted case that when the petitioner was enrolled in the Army, he was declared medically fit and was given category "A". It is after about 12 years of his service that he contracted this disability. In the Medical Board, which was carried out at the time of induction into service, nowhere it had been pointed out that he suffers from any kind of disability. The rules have to be read to the advantage of the claimant especially when he suffers disability during service having been rendered in the Army. The Medical Board has nowhere said that the Total Deafness of right ear suffered by the petitioner could not be detected at the time of his being subjected to Medical Board carried out at the entry point. In the absence of such a note and in view of the regulations referred to above. I am of the

considered opinion that the petitioner is entitled to Disability pension.

11. So far as pendency of appeal before the Ministry of Defence is concerned, it has not been brought to my notice by the counsel for the respondents as to whether the "said appeal has been decided or has not been decided. The written statement was filed by the respondents which is dated 13.10.1999. If the appeal has not been decided for such a long period, it is taken to be dismissed. As such, I have proceeded to decide this petition on merits.

12. Petition is allowed and the respondents are directed to grant Disability Pension to the petitioner within a period of three months from the date of receipt of copy of this judgment.