# Dasrath Singh Vs Government of India and Others

**Court:** Allahabad High Court

**Date of Decision:** Dec. 10, 2003

**Acts Referred:** Allahabad High Court Rules, 1952 â€" Rule 2
Army Rules, 1954 â€" Rule 13(3)(111)(iii)
Constitution of India, 1950 â€" Article 226
Entitlement Rules for Casualty Pensionary Awards, 1982 â€" Rule 14
Pension Regulations for Army, 1961 â€" Regulation 173

**Hon'ble Judges:** R.B. Misra, J

**Bench:** Single Bench

**Advocate:** S.K. Singh and Ashok Kumar, for the Appellant; Chandra Prakash, S.K. Rai, N.P. Shukla, B.N. Singh, S.S.C. and S.C., for the Respondent

**Final Decision:** Dismissed

## Judgement

R.B. Misra, J.
Heard Col. Ashok Kumar, learned counsel for the petitioner and Sri M.P. Shukla learned counsel for & on behalf of Union

of India With the consent of the learned counsel for the parties this petition is decided on merit at this stage under Second proviso Rule 2 of

Chapter XXII of the Allahabad High Court Rules, 1952.

In this petition, the petitioner has challenged the rejection of disability, pension and the order dated 2.2.2000 of Government of India rejecting the

appeal against the rejection of disability pension of the petitioner.

2. According to the petitioner he was enrolled in the Indian Army on 27.10.1992 and after training and was imparted in Rajput Regiment Centre.

The petitioner came across ailment diagnosed as

INSULIN DEPENDENT DIABATES MELLITUS "" and also suffered from Impoteney. According to the petitioner he was medically boarded

on 12th July, 1996 and was accordinglv dispatched to his home town with denial of disability pension though disability had been assessed as 40%

which was for a period of two years and thereafter, the petitioner was re-examined in respect of his disability and after discharge from Military

Hospital without allowing rejoining his parent regimental centre which control the function of the soldiers has but in violation of norms his service

was dispensed with which are in derogation to Defence Services Regulation ( Regulations for Army ) 1987 and against the principle of natural

justice and the appeal of the petitioner against the denial of disability pension was also erroneously rejected by the Central Government on

2.2.2000. As contended on behalf of the petitioner that he is entitled for re-medical examination as the action of the respondents were against the

principle of natural justice, perverse, unwarranted, illegal, arbitrary and against the norms. As contended on behalf of the petitioner a young person

joining Armed Forced as physically/medicailly fit person, when suffers disability, has to be treated with compensation rather than attempts made to

deny them disability pensionary benefits.

3. According to the respondent the petitioner was detected suffering from " IDDM" i.e. "" Insulin Dependent Diabetic Mellitus."" This disease as per

medical instructions is constitutional in nature and neither attributable to nor aggravated by military service. Hence the petitioner was brought before

duly constituted medical board and was invalidated in Medical Category "" EEE"" (P), hence he was invalided out of service under Army Rule 13

(3)(111) (iii). This category is the lowest medical category and is given to the person who is permanently unfit to perform military duties and cannot

be retained in service. These instructions are uniform in nature and are equally applicable to the members of military service. The respondents have

raised preliminary objection for maintainability of this writ petition on the ground of territorial jurisdiction in the light of the order dated 30.4.2003

passed by this Court ( D.B.) in writ petition No. 16528 of 2003. ( Lt. Colonel ( Mrs.) Saroj Mahanta v. Union of India and Ors. ) asserting that

no part of action does not arise territorial jurisdiction of this court, therefore, the present writ petition is to be dismissed out rightly. As a matter of

fact the petitioner had earlier filed writ petition against the discharge before the Allahabad High Court which was dismissed by this court( D.B.) on

the ground of territorial jurisdiction. The petitioner is residing at Kanpur area and counter and rejoinder affidavits have been exchanged therefore,

such preliminary objection may not come in adjudication of the writ petition.

4. As contended on behalf of the respondent that the petitioner was suffering from " IDDM", i.e. from "" Insulin Dependent diabetic Mellitus "" a

disease which cannot be detected initially. This disease is constitution in nature and is neither attributable to nor aggravated by military service and

as such 1ms no relation with the Army service therefore, the order dated 2.2.2000 passed by Govt. of India, Ministry of Defence is legal and in

consonance to the rules and regulations. In cases where an individual is invalidated based on the duly constituted Medical Board proceedings, no

show cause notice separately is to be given but medical board proceedings are given to the individual, which is the basis for invalidment. Hence,

the contention of the petitioner is misconceived. The invalidment is duly supported by medical board proceeding where it was opined that the

disability though 40% but neither attributable to nor aggravated to the military service and is constitutional in nature. In view of the judgment of the

Supreme Court in the case of Union of India v. Sri Baljeet Singh where it was observed that a disability pension for seeking it must be

affirmatively-established, as a matter of fact, as to whether the injury sustained was due to military service or was aggravated contributing

invalidation for the military service.

5. Learned counsel for the petitioner has referred the judgment dated 26.4.2002 passed in writ petition No. 2398 of 2001 of 2002 (3) SCT 798

PH High Court ( Ex. Hav. Kanwar Singh v. Union of India ) where Diabetes Mellitus was treated to be disease attributable to Military Service, if

the same has arisen during the period of Military Service and has been caused by the conditions of employment. However, in view of the judgment

of 10.9.1999 passed in writ petition No. C.W.No. 10 of 1998 by Delhi High Court reported in 2001 SCT 910 (Jai Bhagwan Rohilla v. The Chief

of Army Staff ) it was observed Medical Board did not record that the disease suffered by petitioner could not have been detected by medical

examination prior to petitioners acceptance for service. Therefore, the petitioner to lead discharge necessarily deemed to have arisen during

service. In both circumstance the decision of" the respondents not to grant disability pension to petitioner were trailed to be as arbitrary,

unsustainable and liable to be quashed and respondents were directed to sanction disability pension as 60% for one year invalidating medical

board. In Ex. Hav. Kanwar Singh ( supra ) the Punjab and Haryana High Court (Single Judge ) had observed that under Rule 14 (b) of the

Entitlement Rules, 1982. The medical authority can hold that although the decease was persisting at the time of enrolment in the military but could

not be detected for the reasons to be recorded and the same cannot lie deemed to be attributable to the military service.

6. It has been referred on behalf of learned counsel for the petitioner that the Punjab and Haryana High Court in Ex. Hav. Kanwar Singh ( supra )

has referred the judgment of Delhi High in the case ( Jai Rhagwan Rohilla v. Chief of the Air Staff and Anr. 2000 (1) SCT910 where it has been

held in para 5 as below-

5. In the case of Ex. Hav. Sinder Pal Singh v. Union of India and Anr., reported in 1991 (5) SLR 459, wherein the Single Judge of the Punjab

and Haryana High Court has held that the petitioner''s claim for disability pension is covered under the Pension Regulations ( for Army ) 1961.

Regulation 173 inasmuch as the disease on the basis of which the petitioner was discharged from the Army Service had arisen during the course of

the employment and, therefore, would be entitled to disability pension in absence of note made at the time of petitioner''s acceptance for military

service that he was suffering from a disease on account of which he was discharged from service.

In the case of Deepak Kumar Singh Vs. Union of India, the Division Bench of this High Court held that the disease which led to the petitioner''s

discharge will be deemed to have arisen during Air Force service and the petitioner neither hospitaliazed or treated for the said disease, the Chief

Controller of Defence Accounts ( Pensions ), Allahabad, in the absence of any other medical opinion, could not have ruled out or ignored the

opinion of the Medical Hoard upon whose opinion the petitioner was invalidated out assessing disability at 40% for two years and the decision of

the respondents not to grant disability pension to the petitioner being arbitrary, unsustainable and liable to be set aside.

7. Learned counsel for the respondent has submitted that the judgment passed in Ex. Hav. Kanwar Singh (supra) and Jai Bhagwan Rohilla are

specifically in particular facts and circumstances whereas the Military Board specifically constituted for the purpose has taken care of and has

found that the disease in question was not attributable to the Military service and the analysis and conclusion arrived at the subjective satisfaction of

Medical Board cannot be gone into and could be upset unless apparently it is observed.

8. I have heard learned counsel for the parties, I find force in the contention of learned counsel for the respondent as the Medical Board

specifically constituted for the purpose for examining the ailment of the petitioner had given its report and this court is not expected to sit over the

subjective decision of the Medical Board. Therefore, this court is not inclined to invoke its extraordinary jurisdiction to entertain the writ petition

under Article 226 of the Constitution.

Therefore, the writ petition is dismissed.