

## Constable Kapil Dev Vs Union of India (UOI) and Others

**Court:** Delhi High Court

**Date of Decision:** July 10, 2008

**Acts Referred:** Defence Services Regulations " Regulation 143

**Hon'ble Judges:** Sanjay Kishan Kaul, J; Mool Chand Garg, J

**Bench:** Division Bench

**Advocate:** K. Ramesh, for the Appellant; Manoj Ohri, for the Respondent

**Final Decision:** Allowed

### Judgement

Sanjay Kishan Kaul, J.  
Rule DB.

2. At the request of the learned Counsel for the parties, the petition is taken up for final disposal.

3. The petitioner was enrolled with the BSF on 11.1.1993 and was transferred to the 79th Battalion (BSF) in Srinagar (Jammu and Kashmir) on

10.1.1994. The petitioner was diagnosed with the problem of "Anxiety Neurosis with Reactive Depression" and was medically boarded out of

service on 20.12.2001.

4. The petitioner claims that with regular treatment and psychiatric counselling his condition improved over a period of time and in December 2006

he became fully fit. The petitioner has prayed that he be redeployed in service without back wages on parity with the case of Sepoy Jawahar Singh

where after a lapse of five (5) years a person was so redeployed. In the alternative it is prayed that in case the petitioner is still found medically unfit

in view of the disability of 60 per cent as prescribed by the Medical Board at the stage of his discharge, he should be paid extraordinary (disability)

pension.

5. The facts of the present case show that the petitioner was deployed with the Battalion in Jammu and Kashmir for a period of seven (7) years,

which itself is extraordinary taking into consideration the fact that the conditions of service are difficult in such areas. The stress and strain of serving

in an area with high degree of militancy itself is capable of disturbing the mental balance and that is why normally deployment in such areas is for a

shorter period of time. Another peculiar fact is that though in 1997 itself the petitioner was detected with the beginning of such a problem he was

continued to be deployed only in Jammu and Kashmir though he was given medical advice and treatment.

6. The opinion of the Medical Board which dealt with the case of the petitioner before he was boarded out shows that the petitioner had been

under treatment for the said disease of "Anxiety Neurosis with Reactive Depression". The recommendation was to declare him unfit for further

service and be placed in category EEE. The percentage of disability was assessed at 60 per cent and his disease was held not to have been by

irregular or intemperate habit. In column No. 4 of the proforma while answering the question whether the disease was directly attributable to

condition of service it has been stated in the negative as "No" but simultaneously column No. 6 reads as under:

6. If not directly attributable to service, was it aggravated there by and if so, by what specific conditions : Yes, due to stress and strain.

7. The aforesaid shows that there is certainly aggravation of the medical problem due to stress and strain of service. It is trite to say that if the

disease is either attributable to or aggravated by military service, the petitioner would be entitled to extraordinary (disability) pension. The own

opinion of the doctors itself establishes the cause and effect and thus, it is the stress and strain of service, which has at least aggravated the

problem. It can hardly be said in such a case that the petitioner is not entitled to the extraordinary (disability) pension.

8. The petitioner is held entitled to the extraordinary (disability) pension and the arrears of the pension be remitted to the petitioner restricted to a

period of three (3) years prior to the filing of the petition and the needful be done within three (3) months from today.

9. The second aspect, or what is really the first relief claimed by the petitioner is about his redeployment in service. Learned Counsel for the

petitioner seeks to draw strength from Regulation 143 of the defense Service Regulations, 1987, which reads as under:

143. Re-enrolment of Ex-Servicemen Medically Boarded Out. - (a) Ex-Servicemen, who are in receipt of disability pension, will not be accepted

for re-enrolment in the Army.

(b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their

disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-enrolment, either in combatant or non-combatant

(enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman

applies for re-enrolment and claims that he is entirely free from the disability for which he was invalided, he will be medically examined by the Rtg

MO and if he considers him fit, the applicant will be advised to apply to officer-in-charge, Records Office concerned, through the recruiting officer

for getting himself re-medically boarded. The officer-in-charge, Records Office concerned, on receipt of the application, will arrange for his

medical examination at a Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including

that on accommodation and journey to and from the place of medical examination.

If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service,

subject to the following conditions:

(i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the

colours and his previous colour service will count towards the minimum service required for transfer to the reserve.

(ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all

other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve.?

10. It is no doubt true that the aforesaid Regulations are in respect of the Army and would not ipso facto apply to the BSF. It is for this reason that

the illustration given by the petitioner on Sepoy Jawahar Singh would not imply that the petitioner has to be treated at parity in the absence of such

regulation. It is, of course, true that Sepoy Jawahar Singh was also a case of psychiatric illness which was cured and though he was invalidated out

of service on 22.6.1997 he was redeployed on 9.11.2002. The question, however, begs consideration as it is in the fitness of things that when the

Army, which is the main defense force, can have such Regulation should the BSF also not examine the feasibility of having norms and regulations

for such redeployment.

11. We consider it appropriate to direct the BSF to examine the adoption of such norms and regulations and take a decision in this behalf within a

period of three (3) months from today. The object is obvious that persons who are trained and who may be temporarily incapacitated but

subsequently recovered can have their services usefully deployed by the Army/paramilitary forces.

12. We also consider it appropriate to direct that the feasibility of such redeployment of the petitioner be examined by the competent authority

subject to the petitioner being found medically fit by the Board to be constituted by the BSF. The necessary action in this behalf be taken within a

period of six (6) months from today.

13. The writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

14. Dasti.