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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 280 of 2011

Friday, this the 17th of January, 2014

"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon'ble Lt. Gen. K. Surendra Nath, Administrative Member"

Ex. No. 6315859 Signalman Bhupendra Singh,
S/o Late Shri Wazir Singh, aged about 64 years
R/o 69/3, Block-7, Govind Nagar, Kanpur (UP)

…….Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.

2. Chief of the Army Staff, Army Headquarters, DHQ PO New Delhi

3. The Officer In-Charge, Signal Records Jabalpur, Jabalpur Cantt District : Jabalpur (MP)

4. The Chief Controller of Defence Accounts, Draupadi Ghat, Allahabad (UP)

….Respondents

Ld. Counsel appeared for the applicant -Shri R Chandra, Advocate

Ld. Counsel appeared for the respondents-Shri V.B. Srivastava, Central Government Counsel

ORDER

"Lt. Gen. K Surendra Nath, Administrative Member"

1. This Original Application has been filed under section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has claimed following reliefs :-

(a) The Hon'ble Tribunal may be pleased to quash the order dated 01/03/1978, 12/01/1979 & 13/06/2011 (Annexure-A/1, A/2 & A/3).

(b) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension to the applicant w.e.f. the date of discharge along with its arrears with interest at the rate of 18 percent per annum.

(c) Any other appropriate writ, order or direction, which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.

2. In brief, the facts of the case are that the applicant was enrolled in the Indian Army (Corps of Signals) on 21 December 1965. He was invalided out of service on 27 August 1976 in Medical Category 'EEE' under Army Rule 13(3) Item III (iii) by an Invaliding Medical Board held at Military Hospital, Jalandhar Cantt on 30 July 1976 due to disease NEUROSIS (Anxiety State). Invaliding Medical Board assessed the disability of the applicant at 20%. However, Invaliding Medical Board's recommendation regarding attributability/aggravation due to Military Service was shown as Nil. **(Refer Annexure R-IX to CA).**

3**.** The applicant had rendered 10 years and 186 days of service in the Army. He was sanctioned Service Element of Pension @ Rs 54/- p.m. w.e.f. 27.08.1976 and then revised to Rs 3616/- w.e.f 1.07.2009 for

life by PCDA (P) Allahabad. The disability pension claim of the applicant was processed by Signal Records vide letter P/6315859/DP-3/NER dated 12.11.1976 to PCDA (Pension) Allahabad which was rejected on the ground that the disability is neither attributable to, nor aggravated by, military service. The applicant preferred First Appeal dated 06.06.1978 against the decision of the PCDA (P) Allahabad to Government of India, Ministry of Defence for consideration which was rejected stating the same grounds as that of PCDA (Pension) Allahabad. The applicant again submitted a representation to Signal Records for re-consideration of his disability pension in Jun 2011 which was rejected on 13.06.2011. Being aggrieved, the applicant has filed this Writ Petition.

4. Heard Shri R. Chandra, learned counsel for the applicant and Shri **V.B.** Srivastava, Central Government Counsel and perused all the relevant records.

5. Learned counsel for the applicant has submitted that at the time of Invaliding Medical Board, the applicant was informed by the medical authorities that his disease "NEUROSIS" is attributable to, and aggravated by, military service and hence his disability has been assessed at 20%. As per Para 173 of the Pension Regulations for the Army 1961, Part I and II, an individual is entitled for disability pension if the disability on account of which he has been discharged from the service is attributable to or aggravated by service and is assessed at 20 percent or over. He further stated that Rule 7 (b) of Entitlement Rules (Appendix II to Pension Regulations for the Army) that 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 the service. In para 7 (c) of the Entitlement Rules, it has been provided that if a disease is accepted as having arisen in service**,** it must also be established that the conditions of service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in Army service. Learned counsel submitted that the applicant was found completely fit after thorough medical examination at the time of entry into Army service. Further he was medically examined every year as per existing rules and adjudged 'Fit' in 'AYE' category. The learned counsel submitted that the applicant was exposed to extreme climatic conditions during his posting to field and high altitude areas which facilitated the onset of the disease. The applicant was in the Corps of Signals where his duty was to charge various types of batteries for the regiment. This also contributed to the aggravation of this disease.

6. In support of his contention, learned counsel for the applicant cited Hon'ble Apex Court judgement in the case of Dharamvir Singh Vs UOI & others, 2013 AIR SCW 4236 which held that if an individual is invalided out of service on account of disability and the medical documents do not contain the fact that the disability could have existed prior to his entry into the service but could not have been detected due to the reasons mentioned therein, the disability is liable to be considered as Attributable to Service. In the case of the applicant no such disease existed prior to his entry into military service and hence the disability is to be treated as attributable to, and aggravated by military service.

7. Learned counsel for the applicant submitted that the claim of the applicant for disability pension has been rejected in a most arbitrary, illegal and malafide manner without any authority and submitted that the applicant be allowed 20% disability pension for life from the date of discharge from service with its arrears at 18% interest per annum.

8. Learned counsel for the respondents submitted that provisions of Rule 173 of Pension Regulation, Part I, 1961, the disability pension is payable to an individual whose disability is assessed either attributable to or aggravated by military service and is assessed at 20% or more by the medical authority. Since the disability of the applicant was regarded neither attributable to, nor aggravated by military service by Invaliding Medical Board, he was not granted disability pension. The same point of view was taken by the PCDA (Pension) Allahabad and Government of India, Ministry of Defence in rejection of his disability pension.

9. Learned counsel for the respondents submitted that plea of the petitioner that his disability was regarded as attributable to and aggravated by military service is false and misleading. The Invaliding Medical Board was held on 30.07.1976 at MH Jalandhar Cantt which regarded his disability NEUROSIS (Anxiety State) neither attributable to nor aggravated by military service. Since the disease NEUROSIS (Anxiety State) was neither attributable to nor aggravated by military service as held by Invaliding Medical Board, the claim for the disability pension of the applicant is not in order. He further submitted that as per records held with Signal Records, the onset of disability was in peace station while he was serving with 'Z' Communication Zone Signal Regiment, therefore, the medical authority has rightly

considered his disability neither attributable to nor aggravated by military service. The assessment of attributability or aggravation is the sole responsibility of medical authority and not personal presumption of the applicant.

10. Learned counsel for the respondents submitted that appeals made by the applicant to PCDA (P) Allahabad, Government of India, Ministry of Defence and Signal Records were rightly rejected due to policy constraints. Therefore, the plea of the applicant is not sustainable and be dismissed being devoid of merit and lacking substance.

11. We have perused documents and heard arguments of both the learned counsels.

12. In the instant case the applicant had put in 10 years and 186 days service in the Army and was invalided out of Service due to disease "NEUROSIS" w.e.f. 27.08.1976. The Invaliding Medical Board had granted the disability of the applicant at 20% with the remarks that his disease is not attributable to or aggravated by military service. Based on this report, no disability pension was granted to the applicant. Accordingly the representations of the applicant were rejected by the respondents.

13. Relevant portion of the orders and policies on the subject are as follows :-

(a) **<u>Pension Regulation for the Army 1961</u>**

Para 8.1 *"Disability pension is granted to officers and personnel below officer rank who are invalided out of service on account of causes which are accepted as*

attributable to or aggravated by service, irrespective of their length of service and provided that degree of disablement is assessed at 20% or more. The disability pension consists of two elements.

(i) ***Service element*** *which depends on the length of service and rank.*

(ii) ***Disability element*** *which depends on percentage of disablement in the case of officers and also rank in case of personnel below officer rank. In case disability falls below 20% after grant of disability pension,* ***the service element of disability pension is permanent****".*

Para 173*. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.*

14. In the case of Dharamvir Singh Vs. Union of India and Ors reported in 2013 AIR SCW 4236, in para (vi) of the judgement, Hon'ble Apex Court has held –

" 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 been 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 paragraphs 7,8 and 9 as referred to above.

In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary

he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service. The pension sanctioning authority had failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rule 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken placed due to service. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of disability of death resulting from disease is or is not attributable to service. It is immaterial whether the cause giving rise to disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions. Thus, the appellant in present case is entitled for disability pension"

15. In view of the aforesaid citations, it is amply clear that at the time of joining the Army Service the applicant was in sound physical and mental condition as no note of any disability or disease was made at the time of applicant's acceptance for military service. Further, the

applicant has put in more than 10 years service, when he was affected with the disease; hence opinion of the Invaliding Medical Board that the disease is not attributable to, or aggravated by military service is not at all justified.

16. In view of the above, we are of the considered view that the impugned orders passed by the respondents was not only unjust, illegal but also not in conformity to law as laid down by the Hon'ble Supreme Court in its various judgments. We are of the considered opinion that the respondents have failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. In absence of any evidence on record to show that the applicant was suffering from "NEOROSIS" at the time of acceptance of his service and the fact that the applicant had put in over 10 years of service at the time of onset of disease, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken placed due to service.

17. Thus in the result, the O.A. succeeds and is allowed. The impugned orders passed by the respondents dated 01.03.1978, 12.01.1979 and 13.06.2011 are set aside. The applicant is entitled to disability pension at 20% from the date of discharge as recommended by Invaliding Medical Board. We direct the respondents to comply

the order and pay disability pension at 20% from the date of discharge alongwith its arrears with interest at the rate of 6% per annum within three months from the date of production of a certified copy of this order.

18. No order as to costs.

(Lt. Gen. K Surendra Nath)
Administrative Member

(Justice V.K. Dixit)
Judicial Member