

RESERVED**A.F.R**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A. No. 116 of 2011**Tuesday, this the 11th of March, 2014****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt. Gen. A.M. Verma, Administrative Member”**Laxmikant Tewari, son of Shri Beni Madhav Tewari, resident of Band Hameerpur,
Police Station Achalganj, District- Unnao.

.....Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Group Captain, Commanding Officer B & ITI, Air Force Bangalore (Karnatka).
3. The Chief Controller of Defence Accounts, (Pension), Allahabad .

....Respondents

Ld. Counsel appeared for the applicant - Shri R Chaubey, Advocate**Ld. Counsel appeared for the respondents- Shri R.K. Singh,
Central Government Counsel**

ORDER

“Per Justice Virendra Kumar DIXIT, Judicial Member”

1 The Writ Petition No. 7124 of 2000 (S/S) has been received by this Tribunal by transfer from Allahabad High Court, Lucknow Bench at Lucknow on 04.11.2011 and renumbered as Transferred Application No. 116 of 2000.

2. The applicant through this Transferred Application has prayed as under :

(i) issue a Writ, order or direction in the nature of Certiorari to quash the order dated 26th, April 2000 passed by opposite party no. 1, contained as Annexure no. 3 to this Writ Petition and the order dated 9th, April 1996 passed by opposite party no. 2 contained as Annexure no. 1 to this Writ Petition.

(ii) to issue/pass an order or direction to the respondents to grant the applicant/petitioner Disability Pension from the retrospective effects i.e. from the date of discharge of the petitioner with relevant interest thereon. The Disability Pension may kindly be directed to the applicant/petitioner for life.

(iii) issue a Writ, order or direction in the nature of mandamus directing the opposite parties to give civil employment in his department or to pay disability pension.

(iv) Cost of the Writ Petition be awarded to the petitioner.

3. In brief, the facts of the case are that the applicant was enrolled in the Indian Air Force on 03 May 1994. He was invalided out of service on 09 April 1996 in Medical Category 'EEE (Psy)' under Air Force Rules 1969, Chapter III, Rules 15 Clause 2 (k), "Having been found Medically Unfit for Further Retention" by an Invaliding Medical Board held at Command Hospital Air Force, Bangalore on 18 March 1996 (approved on 27 March 1996) due to disease 'OTHER NON ORGANIC PSYCHOSIS (298). Invaliding Medical Board assessed the disability of the applicant at 40% for two years. Invaliding Medical Board's recommendation regarding attributability /aggravation due to Air Force Service was shown as 'Neither attributable to nor aggravated by Military service and constitutional disease not connected with service'. Accordingly, the applicant was discharged from Air Force service under Air Force Rules 1969 with effect from 09.04.1996 for the disease 'Other Non organic Psychosis (298) with 40% disability for two years.

4. The applicant had rendered 01 year and 343 days of service in the Air Force. The disability pension claim of the applicant was processed by Air Force Records to PCDA (Pension) Allahabad which was rejected vide order dated 21.01.1997 on the ground that the disability is neither attributable to, nor aggravated by Air Force service. The applicant preferred his Appeal dated 12.02.1997 against the decision of the PCDA (P) Allahabad to Government of India, Ministry of Defence for consideration which was rejected vide order dated 26.04.2000 stating that "*the disability on account of which you were invalided out of service is constitutional disorder. On perusal of your service Medical documents the Appellate Medical Authority has found that ID was diagnosed and managed well in time. In view of the fact that your disability has been regarded by the Medical Authority as neither attributable to nor aggravated by duties of military service, you are **not entitled** to*

disability pension under the rules.” Being aggrieved, the applicant filed this Writ Petition before the Hon’ble Allahabad High Court, Lucknow Bench at Lucknow.

5. Heard Shri **R. Chaubey**, Ld. Counsel for the applicant and Shri **R.K. Singh**, Ld. Central Government Counsel at length and perused the relevant documents available on record.

6. Ld. Counsel for the applicant submitted that the applicant was selected through competitive examination for the post of Missile Fitter (Electrical) as Air Craftman in the year 1994. The applicant also passed the medical examination during the recruitment process. The applicant also passed the medical examination held at Air Force Station Chakeri, Kanpur. Thereafter the applicant was directed to report for his duty at Air Force Station Jahahalli (Electronics Training Institute), Bangalore and he joined duty on 06.05.1994 for a two years training. After completion of the first lap of training the applicant was allowed to come home for twenty eight days Basic leave. On 13.01.1995, the applicant reported back to his duty place and fell ill due to high fever. Due to this illness, the applicant could pass only two fortnightly tests out of six fortnightly tests. Hence, the applicant could not qualify in the semester test, however, the applicant was allowed for second semester course which was completed after recouping from his illness. During the training period, due to some unwanted pressure of his seniors to perform menial work, applicant got disturbed and he was hospitalized in Psychiatric Ward of the Command Hospital from 07.01.1996 to 31.01.1996. In April 1996, the applicant was illegally declared as mad and he was handed over to his father on 16.04.1996 with the discharge certificate dated 09.04.1996, in which it was mentioned that under Air Force Rules, the applicant was found medically unfit, however was fit for civil employment.

7. Ld. Counsel for the applicant further submitted that the respondents have not mentioned anywhere that such disease is not curable and why was the applicant, who was in service, not treated properly and retained in service. He further contended that Rule 153 of the Pension Regulations of the Air Force, 1961 (Part I) provides primary conditions for grant of disability pension as, “unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over. In this case, after examination of the applicant by the Board of Doctors, it was reported that the disease was not connected with the service and as a result he cannot be declared to have suffered disease due to the service. Ld. Counsel further submitted that the applicant while in service, fell ill and that, therefore, he is entitled to disability pension. He places reliance on paragraph 6 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which states that disablement or death shall be accepted as due to Air Force Service, provided, if it is certified that : (a) the disablement is due to a wound, injury or disease which – (i) is attributable to Air Force Service or (ii) existed before or arose during Air Force service and has been and remains aggravated thereby. As per the medical report the applicant fell ill while he was in service and that, therefore, it is presumed that it was during service and accordingly must be attributable to military service. In such case, when a disability pension is sought for the claim, must be affirmatively established, as a fact, as to whether the illness was due to military service or was aggravated which contributed to invalidation for the military service. In case the applicant was allowed to face the Invaliding Medical Board, the respondents should have considered disability pension .

8. In support of his contention, learned counsel for the applicant has relied upon the law laid down by Hon'ble the Apex Court, in the case of Dharamvir Singh Vs Union of India & others reported in (2013) 7 Supreme Court Cases Page 316 in which it was 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.

9. 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 40% disability pension for life from the date of discharge from service with its arrears at 18% interest per annum.

10. On the other hand, Learned counsel for the respondents has submitted that as per provisions of Rule 153 of Pension Regulation for the Air Force 1961 (Part I), 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.

11. Learned counsel for the respondents further submitted that the disease was assessed neither attributable to nor aggravated by military service. Since the disease OTHER NON ORGANIC PSYCHOSIS (298) 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 also submitted that as per records held with Air Force Records Office, the onset of disability was in peace station while he was undergoing training at Bangalore, therefore, the medical authority has rightly considered his disability neither attributable to nor aggravated by Air Force Service. The assessment of attributability or aggravation is the sole responsibility of medical authority and not personal presumption of the applicant.

It is also submitted that appeals made by the applicant to PCDA (P) Allahabad, Government of India, Ministry of Defence and Air Force 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.

12. We have considered the respective arguments.

13. In the instant case the applicant had put in 01 year and 343 days service in the Air Force and was invalided out of Service due to disease "OTHER NON ORGANIC PSYCHOSIS (298)" w.e.f. 10.04.1996. The Invaliding Medical Board had granted the disability of the applicant at 40% 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.

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

(a) **Pension Regulation for the Air Force 1961 (Part I)**

Para 153. 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.

"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.

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

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**".*

15. In the case of Dharamvir Singh Vs. Union of India and Ors reported in (2013) 7 Supreme Court Cases 316, in paras 29.6, 29.7, 30, 31, 33 and 34 of the judgement, the observations made by Hon'ble the Apex Court are as under :

29.6 *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 (Rule 14 (b));) and*

29.7 *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 (para 27).*

30. *We, accordingly, answers both the questions in affirmative in favour of the appellant and against the respondents.*

31. *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 the 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, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows :

“(d) In the case of a disability under (c) the Board should state what exactly in their opinion is the cause thereof. – YES

33. In spite of the aforesaid provisions, the pension sanctioning authority 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 place due to service.

34. *As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of disability or 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”*

16. In the case of *Veer Pal Singh vs. Ministry of Defence* reported in (2013) 8 SCC 83 in paras 11,12,13,17,18 and 19 of the judgement, the observations made by Hon'ble the Apex Court are as under :

11. *A recapitulation of the facts shows that at the time of enrolment in the army, the appellant was subjected to medical examination and the Recruiting Medical Officer found that he was fit in all respects. Item 25 of the certificate issued by the Recruiting Medical Officer is quite significant. Therein it is mentioned that speech of the appellant is normal and there is no evidence of mental backwardness or emotional instability. It is, thus, evident that the doctor who examined the appellant on 22.05.1972 did not find any disease or abnormality in the behaviour of the appellant. When the Psychiatrist Dr (Mrs) Lalitha Rao examined the appellant, she noted that he was quarrelsome, irritable and impulsive but he had improved with the treatment. The Invaliding Medical Board simply endorsed the observation made by Mr Rao that it was a case of “Schizophrenic reaction”.*

12. *In Merriam Webster Dictionary “Schizophrenia” has been described as a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as in delusions), perception (as in hallucinations), and behavior – called also dementia praecox; schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history.*

13. *The National Institute of Mental Health, USA has described “schizophrenia” in the following words:*

“Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices other people don’t hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated. People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Sometimes people with schizophrenia seem perfectly fine until they talk about what they are really thinking. Families and society are affected by schizophrenia too. Many people with schizophrenia have difficulty holding a job or caring for themselves, so they rely on others for help. Treatment helps relieve many symptoms of schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities.

17. Unfortunately, the Tribunal did not even bother to look into the contents of the certificate issued by the Invaliding Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. If the learned members of the Tribunal had taken pains to study the standard medical dictionaries and medical literature like **The Theory and Practice of Psychiatry by F.C. Redlich and Daniel X. Freedman, and Modi's Medical Jurisprudence and Toxicology**, then they would have definitely found that the observation made by Dr Lalitha Rao was substantially incompatible with the existing literature on the subject and the conclusion recorded by the Invaliding Medical Board that it was a case of schizophrenic reaction was not well founded and required a review in the context of the observation made by Dr Lalitha Rao herself that with the treatment the appellant had improved. In our considered view, having regard to the peculiar facts of this case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant.

18. In *Controller of Defence Accounts (Pension) vs. S Balachandran Nair* on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in *Ministry of Defence vs A.V. Damodaran*. However, in neither of those cases, this court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.

19. *As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14.07.2011 and 16.09.2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension.*

17. In the instant case, the Medical Board has expressed its opinion that the disease is not attributable to, or aggravated by Air Force Service but 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 Air Force service. Without going through the aforesaid facts the Pension Sanctioning Authority in mechanical way 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 “OTHER NON ORGANIC PSYCHOSIS (298)” at the time of acceptance of his service and the fact that the applicant had put in over 01 year 343 days 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 place due to service.

18. In view of the law laid down by the Hon’ble The Apex Court in the case of Dharamvir Singh (Supra) and Veer Pal Singh (Supra), in the instant case admittedly the applicant at the time of joining the Air Force Service 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 Air Force Service. Further, the applicant has put in more than 01 year and 343 days 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 Air Force Service is not at all justified.

19. In view of the above, we are of the considered view that the impugned orders passed by the respondents were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the respondents dated 09.04.1996 and 26.04.2000 deserves to be set aside and the applicant is entitled to disability pension @ 40% from the date of discharge as recommended by the Invaliding Medical Board with interest at the rate of 6% per annum.

20. Thus in the result, the O.A. succeeds and is allowed with cost. The impugned orders passed by the Respondents dated 09.04.1996 and dated 26.04.2000 are set aside. The applicant is entitled to disability pension @ 40% from the date of discharge for two years as recommended by Invaliding Medical Board alongwith interest at the rate of 6% per annum. We direct the respondents to pay the arrears of the said disability pension and refer the case to Review Medical Board for re-assessing the medical condition of the applicant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension. The Respondents are further directed to comply the order within three months from the date of production of a certified copy of this order.

(Lt. Gen. Anand Mohan Verma)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

dds/-