

**A.F.R.**  
**Court No.1**

**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 121 of 2012**

Friday this the 5<sup>th</sup> day of February, 2016

**Hon'ble Mr. Justice V.K. DIXIT, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Talak Mahmood aged about 54 years,  
Ex. Grenadier No.2667411, S/o Late Abdul Hamid  
Param Veer Chakra R/o Village & Post Hamid Dham  
(Dhamupur) District Ghazipur U.P.

..... Petitioner

By Legal Practitioner Shri Shiv Dayal Singh, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence,  
South Block, New Delhi-110011.
2. Chief Controller of Defence Accounts  
(Pension), Allahabad, U.P.
3. Incharge Records Officer, The Grenadiers Records,  
Jabalpur-901124 C/o 56 A.P.O.
4. Commanding Officer, 4 Grenadiers PIN-910804  
C/o 56 A.P.O.

..... Respondents

By Legal Practitioner Shri Namit Sharma, Learned Counsel  
for the Central Government

**ORDER**

**“Hon’ble Mr. Justice V.K. DIXIT, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the main reliefs as under:-

- “(i) *This Hon’ble Court may graciously be pleased to quash the impugned order passed by the Chief Controller of Defence Account (Pension), Allahabad, in pursuance of which communication dated 16-4-2005 (Annexure No. A-3) was served upon the applicant.*
- (ii) *This Hon’ble Court may graciously be pleased to direct the respondents to grant disability pension to the applicant by allowing application dated 24-4-2006 (Annexure No.A-4) filed by the applicant for **Hypermetropia in the right eye (370), 20%, Schizophrenic (295), 40% (composite assessment of both the disabilities is 60%).***
- (iii) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iv) *Award costs to the applicant.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 02.03.1976 and was discharged from of service on 26.07.1979 under 13 (3) III (iii) of the Army Rules, 1954. The medical board held prior to his discharge, assessed the applicant’s disability for the disease **Hypermetropia Rt. Eye (370) – disability 20% and Schizophrenic (295) - disability 40% and composite disability @ 60% for 02 years** and the disability was considered as neither attributable to nor aggravated by military service. Claim for disability pension of the applicant was rejected vide order dated 23.06.1980 and his

first appeal was also rejected vide order dated 24.01.1981. Aggrieved, the applicant filed writ petition in the Hon'ble High Court of Judicature at Allahabad, which was dismissed on the ground of alternative remedy vide order dated 28.05.2010. Thereafter, the present Original Application has been filed on 30.03.2012. Since the first appeal of the applicant stood rejected vide order dated 24.01.1981, the Original Application was accompanied by an application for condonation of delay, which has been allowed vide this Tribunal's order dated 10.09.2013 and the delay has been condoned.

3. Heard Shri Shiv Dayal Singh, Learned Counsel for the applicant, Shri Namit Sharma, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant is son of late **Abdul Hamid**, CQMH, who was awarded **Param Vir Chakra** for the act of bravery in the year 1965 war. The applicant was enrolled in the Indian Army after proper medical examination. While the applicant was posted in NEFA in December, 1979, he fell down and sustained injuries in his knee of right leg and the right eye, it is apparent that the disability has occurred during service and due to service conditions, as such he be granted disability pension. Learned Counsel cited catena of judgments passed by the various Benches of Armed Forces Tribunal as well as the Hon'ble The Apex Court about grant of disability pension and submitted that disability pension be granted to the applicant.

5. **Per contra**, the Learned Counsel for the respondents submitted that the medical board had assessed the composite disability as 60% for two years and considered it

neither attributable to nor aggravated by military service. In accordance with Para 173 of the Pension Regulations, disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. Since the medical board has assessed the disability as neither attributable to nor aggravated by military service, no disability pension is admissible to the petitioner.

6. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portions of the Pension Regulations for the Army 1961 (Part I), and the provisions of Rules 4, 5, 9, 14 and 22 of the Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

“(a) **Pension Regulations for the Army 1961 (Part I)**

*“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.*

*The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”*

“(b) **Entitlement Rules for Casualty Pensionary Awards, 1982**

*4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents in other services who are placed permanently in a medical category other than ‘A’ and are discharged*

*because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service.*

5. *The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-*

**Prior to and during service.**

- (a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
- (b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

**Onus of Proof.**

9. *The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

**Disease**

14. ***In respect of disease, the following rules will be observed:-***

- (a) *For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:*
- i) That the disease has arisen during the period of military service, and*
- ii) That the disease has been caused by the conditions of employment in military service.*
- (b) *If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to*

*acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.*

*(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.*

*(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.*

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**22. Conditions of unknown Aetiology:-** There are a number of medical conditions which are unknown aetiology. In dealing with such conditions, the following guiding principles are laid down-

*(a) If nothing at all is known about the cause of the disease, and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.*

*(b) If the disease is one which arises and progresses independently of service environmental factors than the claim may be rejected.”*

7. We would like to refer to the decisions of Hon’ble The Apex Court in **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**, in which Hon’ble The Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*"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 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 Officers (Military Pensions), 2002 - "Entitlement : General Principles", including Paras 7,8 and 9 as referred to above (para 27).*

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*31. In the present case it is undisputed that no note of any disease has been recorded at the time of the 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**

*Disability is not related to military service”.*

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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 the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the 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.*

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35. *In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per the order passed by the learned Single Judge. No costs.”*

8. **In Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. the Hon’ble Apex Court has held as under:

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.....”*

9. **In Union of India vs. Rajbir Singh, Civil Appeal No.2904 of 2011 decided on 13.02.2015**, Hon’ble The Apex Court has held as under:

*“16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have*

*been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.”*

10. In the case of **Veer Pal Singh vs. Ministry of Defence** reported in (2013) 8 SCC 83, 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 Dr 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.”*

11. Keeping in view the Policy Letter vide Circular No.1(2)/97/D(Pen-C) dated 31.01.2001 about rounding off of disability pension and decision of Hon'ble The Apex Court in case of **Union of India and others vs. Ram Avtar & others, Civil appeal No.418 of 2012 dated 10<sup>th</sup> December, 2014**, we are of the view that the applicant, who was invalided out of service on account of his being in low medical category, was having some disability, as such he would be entitled to the benefit of rounding off.

12. In the case of **Shiv Das Vs Union of India reported in 2007 (3) SLR page 445 (Supra)** in Para 9 of the judgment, Hon'ble The Apex Court has observed:

*“In the case of the pension the cause of action actually continues from month. That however, cannot be a ground to overlook delay in filing the pension. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

13. Having given considerations to the rival submissions made on behalf of the parties' Learned Counsel, we find that the applicant was medically fit when he had been enrolled in the Indian Army and he suffered the disability during his service, therefore, in view of the judgment of the Hon'ble The Apex Court in the cases of **Dharmvir Singh Vs. Union of India & others** (supra), **Sukhvinder Singh Vs. Union of India** (supra) and **Union of India Vs. Rajbir Singh** (supra), a presumption has to be drawn in favour of

the applicant and the applicant is entitled to disability pension.

14. In the instant case, there is no note of any disease in the service record of the applicant at the time of enrollment in service. Since there is no evidence on record to show that the applicant was suffering from any disease at the time of his enrollment in service, it will be presumed that he was in good health at the time of entering service and disability has occurred due to military service. Therefore, he is entitled to the relief as per the judgments of the Hon'ble The Apex Court cited above.

15. In view of the above, we are of the considered view that the impugned orders passed by the competent authority were unjust, illegal and not in conformity with rules, regulations and law. The impugned order deserves to be set aside and the applicant is entitled to disability pension @60% for 02 years, which would stand rounded off to 75% in terms of the decision of Hon'ble The Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors** (supra). He is also entitled to interest @ 9% per annum from the date of three years prior to the date of filing the Original Application. We are also of the view that in terms of **Veer Pal Singh's** case (supra), the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the for further entitlement of disability pension, if any.

16. Thus in the result, the Original Application No. 121 of 2012 succeeds and is allowed with cost. The impugned orders dated 23.06.1980 and dated 24.01.1981 are set aside. The respondents are directed to grant disability pension to the applicant @ 60% for 2 years, which would stand

rounded off to 75% in terms of the decision of Hon'ble The Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors** (supra). The respondents are also directed to pay arrears of disability pension with interest @ 9% per annum from three years prior the date of filing the Original Application, i.e.30.03.2009, till the date of actual payment. The respondents are further directed to refer the petitioner's case to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

(Lt Gen Gyan Bhushan)  
Member (A)

(Justice V.K. DIXIT)  
Member (J)

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Dated : Feb. 2016