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

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

**Transferred Application No. 88 of 2011**

Wednesday this the 18th day of May, 2016

**Hon'ble Mr. Justice Abdul Mateen, Member (J)**
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Kailash Chandra No.14701211 Ex. Soldier,
S/o Shri Ram, R/o Lalkurti, Dulikhet,
P.O. Ranikhet, District-Almora

…….. Petitioner

By Legal Practitioner Shri K.K. Singh Bisht, Advocate

Versus

1. Union of India through its Secretary
   Ministry of Defence South Block New Delhi.

2. Controller of Defence Account (Pension), Allahabad

3. Senior Record Officer, Kumaon Regiment, Ranikhet

4. Record Officer, Kumaon Regiment, Ranikhet

…… Respondents

By Legal Practitioner Shri D.K. Pandey, Learned Counsel for the Central Government

**JUDGMENT**

1. Initially, the petitioner had filed writ petition No.1976 of 2005 before the Hon'ble Uttaranchal High Court, Nainital, which after constitution of the Armed Forces Tribunal has been transferred to this Bench of the Tribunal and registered as T.A. No. 88 of 2011.The petitioner has claimed the reliefs as under:-

> *"(a) Issue/pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by PCDA (P) Allahabad, respondent No.2 vide letter No.G-3/89/7754/IC/277 dated 16.02.1990 rejecting the disability pension claim of the petitioner.*
>
> *(b) Issue/pass an order or direction of appropriate nature to the respondents to grant 20% disability pension which after rounding off will be 50% to the petitioner from the date of discharge, i.e. 10 October, 1989.*
>
> *(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case;*
>
> *(d) Allow this application with cost."*

2. The factual matrix of the case is that the petitioner was enrolled in the Indian Army on 12.10.1983 and was discharged from service on 11.10.1989 under rule 13 (2A) of the Army Rules, 1954 in medical category **"BEE"** (Permanent). The Release Medical Board assessed his disability as 20% for 02 years for the disease **Psychalgia** and considered it as neither attributable to nor aggravated by military service. Claim for disability pension of the petitioner was rejected by the PCDA (P), Allahabad vide order dated 16.02.1990. Aggrieved, the petitioner had filed writ petition No. 1976 of 2005 before the Hon'ble

Uttaranchal High Court, Nainital, which after transfer has come before us as Transferred Application.

3. Heard Shri K.K. Singh Bisht, Learned Counsel for the petitioner, Shri D.K. Pandey, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the petitioner submitted that the petitioner was recruited in the Army after he was properly examined by the medical board and was found medically fit for military service. Disability occurred to him during his service, but disability pension was not granted to him. The petitioner as well as his wife aggrieved by non-payment of disability pension sent various representations, however, disability pension was not granted to the petitioner. Since the petitioner had joined the Army in a fit medical condition, keeping in view catena of judgments by various Benches of the Armed Forces Tribunal disability suffered by the petitioner should be treated as attributable to and aggravated by military service and disability pension be granted to him.

5. **Per contra**, the Learned Counsel for the respondents submitted that as per Release Medical Board, the petitioner's disability was considered as neither attributable to nor aggravated by military service, as such, keeping in view the provisions of Para 173 of Pension Regulations for the Army, 1961 (Part–I), disability pension claim of the petitioner has rightly been refused, because 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. The medical board is an expert body and its opinion must be given due weight, value and credence.

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 invalided 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 has clearly postulated that when there is no note of disease or disability available in the service record of the petitioner at the time of acceptance for Army service, it would be presumed that the petitioner was in sound physical and mental condition at the time of entering the service and deterioration in his health had taken place due to service. The relevant portion of the judgment is excerpted below:

> *"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 another case pertaining to grant of disability pension 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. Thirdly, there appears to be no provision authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability, leading to invaliding out of service would attract the grant of fifty per cent disability pension".*

9. In yet another case dealing with grant of disability pension, 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. With reference to the payer for grant of the benefit of rounding off of disability pension from 20% to 50%, we recall the judgment of **Sukhvinder Singh** (supra), wherein Hon'ble The Apex Court has observed that "a disability, leading to invaliding out of service would attract the grant of fifty per cent disability pension", as such the disability pension is liable to be rounded off to 50%.

12. In the instant case having given considerations to the rival submissions made on behalf of the Learned Counsel for the parties, we find that the petitioner had been enrolled in the Army in a fit medical condition and he suffered the disability during his service. No reasoned opinion has been

given by the medical board, on the basis of which, it was concluded that the petitioner's disability was neither attributable to nor aggravated by the service. There is no note of such disease at the time of recruitment in service. On page 3 captioned as "Confidential" in column-1 **"Did the disability exist before entering service" "NO"** has been written. Since there is no evidence on record to show that the petitioner 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, in view of the judgment of Hon'ble The Apex Court in the cases of **Dharmvir Singh** (supra), **Sukhvinder Singh** (supra) and **Rajbir Singh** (supra), it is presumed that deterioration of his health had taken place due to service conditions and the applicant is entitled to grant of disability pension.

13. In order to decide about payment of arrears, we refer to 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 wherein it has been 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. It 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."*

14. In view of the above, we are of the considered view that the impugned orders passed by the competent authorities were unjust, illegal and not in conformity with rules, regulations and law. The impugned orders deserve to be set aside and the petitioner is entitled to disability pension @20% for 02 years which would stand rounded off to 50% in terms of the judgment of Hon'ble The Apex Court in **Sukhvinder Singh** (supra) along with interest @ 9% per annum from three years prior to the date of filing of the writ petition in terms of the judgment of Hon'ble the Apex Court in case of **Shiv Das** (supra). We are also of the view that in terms of **Veer Pal Singh's** case (supra), the case of the petitioner be referred to Review Medical Board for reassessing the medical condition of the petitioner for further entitlement of disability pension, if any.

15. Thus in the result, keeping in view the aforesaid judgments of **Dharmvir Singh** (supra), **Sukhvinder Singh** (supra) and **Rajbir Singh** (supra), the Transferred Application No. 88 of 2011 succeeds and is allowed. The impugned order dated 16.02.1990 is set aside. The respondents are directed to grant disability pension to the petitioner @ 20% for 2 years, which would stand rounded off to 50% in terms of the decision of Hon'ble The Apex Court in the case of **Sukhvinder Singh** (supra). Keeping in view the judgment in case of **Shiv Das** (supra), the respondents are also directed to pay arrears of disability pension with interest @ 9% per annum from three years prior to the date of filing of the writ petition, i.e. 21.12.2005, till the date of actual payment. In terms of the decision of Hon'ble The Apex Court in case of **Veer Pal Singh** (supra), the respondents are further directed to refer

the petitioner's case to Review Medical Board for reassessing the medical condition of the petitioner 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.

16. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Abdul Mateen)
Member (J)

**Sry**

Dated : May 2016