

**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1**O.A. No. 131 of 2015****Wednesday, this the 9<sup>th</sup> day of Dec, 2015****"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon'ble Lt Gen Gyan Bhushan, Administrative Member"**

No. 6497078L Rect Cook (U) Anil Kumar, aged about 36 years, S/O Ex  
Sep Satya Pal Singh, Village and Post - CHHUR, Police Station -  
Sardhana, District - Meerut (UP)

..... **Applicant**

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. Chief of the Army Staff, Army Headquarters, South Block, New Delhi - 110011
3. Adjutant General ADG (PS) AG's Branch, IHQ of MOD(Army), Brassey Avenue, Church Road New Delhi - 110001.
4. Officer In Charge Records, ASC Records (AT) PIN - 900493, C/O 56 APO.
5. Commandant, ASC Centre (North), Paharpur, Gaya (Bihar)
6. Commanding Officer, No-2 Training Battalion (MT), ASC Centre (North), Paharpur, Gaya (Bihar).
7. Chief Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

.....**Respondents**

<b>Ld. Counsel appeared for the Petitioner</b>	<b>- Col (Retd) Y.R. Sharma, Advocate</b>
<b>Ld. Counsel appeared for the Respondent</b>	<b>- Shri A. Patnaik, Central Government Standing Counsel</b>

**ORDER****“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**

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1. Present Original Application has been preferred against the orders whereby claim of the Applicant for disability pension was disallowed initially by respondent No. 7 vide order dated 20.10.2005, then by order dated 22.07.2013 in the first appeal, and finally by order dated 12.03.2015 in the second Appeal. The reliefs sought by the Applicant are quoted below:-

*"(a) issue/pass an order or direction to set aside the order passed by the Chief Controller of Defence Account (Pension) vide their order No G-3/81/101/05-05 dated 04.10.05/20.10.2005.*

*(b) issue/pass an order or direction of appropriate nature to quash/set aside the Orders of First Appellate Authority rejecting the First Appeal being illegal and being without application of mind vide their letter No. B/40502/1075/2012/AG/PS-4 (Imp-III) dated 22.07.2013.*

*(c) issue/pass an order or direction of appropriate nature to quash/set aside the orders of Second Appellate Authority, rejecting the second Appeal vide their letter No B/38046A/26/2014/AG/PS-4 (Second Appeal dated 12.03.2015 forwarded vide ASC (AT) Records letter No 6497078L/Appeal/DP/Pen dated 13 April 2015.*

*(d) issue/pass an order or direction of appropriate nature to the respondents to grant 20% disability element of disability pension to the Applicant from the date of invaliding out of service.*

*(e) issue/pass an order or direction of appropriate nature to the respondents to broadband 20% of disability pension to 50% as per the existing orders of the Government of India and Orders of Hon’ble Apex Court.*

*(f) issue/pass an order or direction as the Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(g) Allow this Original Application with costs."*

2. The admitted and undisputed facts of the case are that the Applicant was enrolled in the Army on 13.10.2003 and was discharged on 04.10.2004 on account of being in low medical category on account of suffering from "ANXIETY STATE ICD (F-41)" and his disability was quantified at 20% for five years but at the same time, it was opined to be neither attributable to nor aggravated by the Military service. The claim for disability pension was rejected by the PCDA (P) vide order dated 20.10.2005. The first appeal was rejected vide order dated 22.07.2013. The second appeal was rejected vide order dated 12.03.2015. It is in the above perspective that the aforesaid Original Application was preferred challenging the impugned orders as aforesaid.

3. We have heard Learned Counsel for the Applicant as also Learned Counsel appearing for Union of India. We have also gone through the materials on record.

4. The Learned Counsel for the Applicant assailed the impugned orders on the grounds that at the time of recruitment, the Applicant was medically fit. Prior to joining Military service, the Applicant was medically examined and no note of expecting the onset of such disease was recorded; that the appellate authorities did not examine the case in the light of the Rules and Regulation; that the orders of the appellate authorities are not reasoned and speaking orders submitting further that a disease which led to an individual's discharge will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's entry in the service of Armed Forces.

5. **Per contra**, Learned Counsel appearing for Union of India contended referring to Para 173 of Pension Regulations for the Army 1961 that "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% or over attended with further submission that invaliding Medical Board rightly opined the disability of the Applicant not connected with Military service.

6. Relevant portions of the Pension Regulation for the Army 1961 (Part I) and Disability Pension Entitlement Rule 1982, reads as under :-

(a) **Pension Regulation 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) **Chapter IV – Entitlement Rules**

**Entitlement Rules for Casualty Pensionary Awards, 1982**

**Rule 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.*

From a bare reading, it would transpire that Para 173 of the Pension Regulations for the Army 1961 postulates that disability pension is granted to an individual on his invalidment from service only when his disability is viewed as attributable or aggravated by Military Service and is assessed at 20% or above by the competent Medical Authority.

7. Now, we proceed to deal with the decisions on the vexed question raised in the instant Application.

8. In connection with the above plea, we would like to refer to the decisions of Hon'ble The Apex Court as cited by Learned Counsel for the Petitioner. The first decision is **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)."

9. We also feel called to refer to chapter II of the 'Guide to Medical Officers (Military Pensions) 2002' relates to Entitlement and General Principles. Para 7 of the said Chapter talks of evidentiary value of medical records at the commencement of service. For proper appreciation of the controversy involved in this case, the said paragraph is reproduced below:

"7. Evidentiary value is attached to the record of a member's condition at the time of commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record an entry in service was due to a non disclosure of the essential facts by the member, e.g., pre-enrolment history of an injury or disease like epilepsy, mental disorder etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

X x x x x x x x x x

(f) Disease which have periodic attacks, e.g. Bronchial Asthma, Epilepsy, CSOM etc."

10. We have traversed upon the relevant medical papers and from a punctilious reading of the medical papers and other allied papers, it would transpire that no note of any disease had been recorded at the time of his entry in the Military service. The respondents failed to bring on record any document to suggest that the Petitioner was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature.

11. Having heard the learned Counsel for the parties, we converge to the view that the controversy involved in this case is squarely covered by the Judgment of Hon'ble the Supreme Court in the case of **Dharamvir Singh vs Union of India and others** (supra) wherein Hon'ble The Apex Court has decided the similar controversy and has come to the conclusion that if the Medical Board has not assigned any reason as to why the disease is neither attributable to nor aggravated by military service, the opinion of the Medical Board cannot be countenanced.

12. In the instant case, the medical board has expressed its opinion that the disease is not attributable to, or aggravated by service but the Respondents have failed to notice that the medical board had not given adequate 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 Army service.

13. In view of the law laid down by Hon'ble The Apex Court in the cases of **Dharamvir Singh (Supra)**, in the instant case admittedly the Applicant at the time of joining the Army 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 Army service. Hence, opinion of the Medical Board that the disease is not attributable to or aggravated by Army Service is not at all justified.

14. In view of the above, we are of the considered view that the impugned orders dated 20.10.2005 (Annexure A-1), 22.07.2013 (Annexure A-2) and 13.04.2015 (Annexure A-3) 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 20.10.2005 (Annexure A-1), 22.07.2013 (Annexure A-2) and 13.04.2015 (Annexure A-3) deserve to be set aside and the Applicant is entitled to disability pension @20% from the date of discharge for five years which would stand rounded off in terms of policy as also in terms of decision of Hon'ble the Apex Court in **Union of India vs. Ram Avtar & ors** in **Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**.

15. In view of the law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh reported in (2013) 8 SCC 83** in which *the Respondents were 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*", we are of the view that in the interest of justice, the case of Applicant be referred to the Re-Survey medical board for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any.

#### ORDER

16. Thus in the result, the Original Application succeeds and is allowed. The impugned orders passed by the Respondents dated 20.10.2005 (Annexure A-1), 22.07.2013 (Annexure A-2) and 12.03.2015 (Annexure A-3) are set aside. The Applicant is entitled to disability pension @ 20% for five years from the date of discharge which would stand rounded off to 50% as per policy and in terms of decision of Hon'ble the Apex Court in **Union of India vs. Ram Avtar & ors** in **Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**. The Respondents shall pay arrears of the aforesaid disability pension

alongwith interest @ 9% per annum till the date of payment. The Respondents are directed to refer the case to Re-Survey Medical board for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any. The Respondents are further directed to comply with the order within three months from the date of production of a certified copy of this order.

17. No. order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

**(Justice Virendra Kumar DIXIT)**  
**Judicial Member**

Date : December , 2015

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