

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 147 of 2014

Friday this the 5th day of February, 2016

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

Ram Sudhar Rai, No.6916986-Y, Ex-Hav, s/o Sri Awadh Kishore, aged about 50 years, Resident of Village-Dhonor Khurd, Post-Office- Kauri Ram, Tehsil & Police Station- Bansgaon, District – Gorakhpur (U.P.)

..... Applicant

By Legal Practitioner Shri V.K. Pandey, Advocate

Versus

1. Union of India through Ministry Of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Officer-in-Charge, AOC Centre, Secunderabad (A.P.) PIN – 500015.
3. COL, Records Office, AOC Records, Post Box No.03 Trimulgherry Secunderabad, (A.P.) PIN – 500015.
4. Officer-in-Charge, DPLC, HQ Purva, UP & MP Sub Area PIN-900479.
5. Commandant, Amn Depot Dehuroad Pune (MH).

..... Respondents

By Legal Practitioner Shri Adesh Kumar Gupta, Learned Counsel for the Central Government

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

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 reliefs as under:-

“(i) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension to the applicant and also quash the impugned order/orders, if any, in the interest of justice, after summoning the same, because no impugned order has been served to the applicant.

(ii) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension from due date to actual date of payment, and also onwards, alongwith 18% (Eighteen) interest on the back disability pension in the interest of justice.

(iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.

(iv) That this Hon’ble Tribunal may be pleased to award the cost of this Original Application Rs.10,000/- (ten thousand) and allow the same.”

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 26.12.1980 and was

discharged from service after completion of 22 years of service in the rank of Naik on 31.12.2002 under rule 13 (3) III (i) of the Army Rules, 1954 in low medical category. The medical board held prior to his discharge, assessed his disability as 40% for life for **Poly Trauma with Severe Head Injury** and considered it as attributable to military service and not aggravated by military service. Claim for disability pension of the applicant was rejected vide order dated 05.09.2012. Aggrieved, the applicant has filed the instant Original Application with delay, which has been condoned vide this Tribunal's order dated 28.01.2013.

3. Heard Shri V.K. Pandey, Learned Counsel for the applicant, Shri Adesh Kumar Gupta, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled in the Indian Army after proper medical examination and he served with utmost dedication. While he was posted at Ammunition Depot, Pune , he met with road accident on 12.02.2001 which caused severe head injury and the applicant was admitted in Lok Manya Tilak Hospital by a stranger and was subsequently transferred to Command Hospital, Pune. There, the applicant got treatment for approx 01 year and 06 months and medical board assessed his medical category P3 (Permanent) and he was sent to Record Office Secunderabad and was discharged without getting any disability pension and no medical papers were provided to him. Learned Counsel for the applicant submitted that the disability of the applicant should have been above 70%. The applicant had served for approximately 22 years. He was enrolled in 1980 and had met with an accident in the year 2001 and there is no record

of any disease or disability at the time of enrolment. As such, his disability should be considered as attributable to service and he be granted disability pension.

5. He further submitted that since the applicant was enrolled in the Indian Army in fit medical condition and the injury had taken place during service and the medical board after perusing the injury report has considered the disability as attributable to military service, therefore, the applicant is entitled for grant of disability pension.

6. **Per contra**, Learned Counsel for the respondents agreed with the submissions made by the learned counsel for the applicant that while serving in Ammunition Depot, Pune, the applicant met with a road accident on 12.02.2001 and sustained injury, which was classified as **“Poly Trauma With Severe Head Injury”**. A court of inquiry was held for the purposes of investigation, which opined that severe head injury sustained by the applicant could not be attributed to military service in peace area and the same was approved by the Station Commander. Accordingly, injury report was initiated on 08.05.2001 and the same was approved by the Commander Head Quarter, Pune Sub Area on 22.06.2001 and the applicant’s injury was declared as attributable to military service. However, the claim for disability pension was rejected by the PCDA (P) Allahabad vide order dated 05.09.2012 stating that the initial court of inquiry declared the injury as not attributable to military service. He also submitted that before proceeding on discharge, the applicant was brought before Release Medical Board on 04.09.2002 at Command Hospital, Pune and the medical board had assessed his disability as attributable to military service and the disability was

assessed as 40% for life. Learned Counsel for the respondents gave details of the observations and correspondence between the applicant's unit and the PCDA (P), Allahabad pertaining to claim for disability pension. The applicant further submitted a statement of case through Zila Sainik Board vide letter dated 03.07.2012. Accordingly the disability claim of the applicant was again forwarded to the PCDA (P), Allahabad vide letter dated 01.08.2012. However, the PCDA (P), Allahabad again rejected the claim of the applicant vide their letter dated 05.09.2012, stating that the initial Court of Inquiry had declared the injury as not attributable to military service.

7. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules & Regulations on the subject. 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.”*

8. In the case of **Dharmvir Singh Vs. Union of India & others** reported in (2013) 7 SCC 316 the Hon’ble Apex Court has held 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 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."*

9. 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.....”.

10. In the instant case, sitting over the opinion of the medical board, the medical officer attached to PCDA (P) has expressed opinion that the disease was not attributable to military service. It is observed that the respondents have failed to notice that the medical officer had not given adequate reason in support of his opinion, though the medical board has considered the disability as attributable, the medical officer attached with PCDA has stated that because the initial Court of Inquiry had declared the injury as not attributable to military service, the injury is not attributable to military service. In the case of **Dharam Vir Singh (supra)**, it has been clearly postulated that 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, it would 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. In view of the decisions of **Hon’ble The Apex Court in Ex. Sapper Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** nodded with approval in **Babu Singh Vs Union of India and others CWP No 3296 of 2003 decided on 26.4.2006**, action by the respondents is not appropriate and not as per law. The observation made in the decision of **Ex. Sapper Mohinder Singh (supra)** being relevant is quoted below:

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

11. In Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 1^{0th} December 2014) in which Hon’ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant is excerpted below:

“4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D

(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

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 6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

12. When this direction of Hon’ble The Apex Court is applied to the instant case, it leads us to the conclusion that the person, who was discharged from service on account of his being in low medical category on completion of his tenure of engagement in low medical category, if found to be suffering from some disability, would also be entitled to the benefit of rounding off.

13. We have given due considerations to the submissions made on behalf of the parties’ learned counsel and we find that the applicant was enrolled in the Indian Army in a fit medical condition and he has suffered the disability during service, as such, in view of the judgment of the Hon’ble The Apex Court in the cases of **Dharmvir Singh Vs. Union of India & others** (supra) and **Sukhvinder Singh Vs. Union of India** (supra), a presumption has to be drawn in favour of the petitioner. It is also observed that the

medical officer attached to the PCDA (P) has changed the recommendations of the medical board without giving any reasoned opinion, as such in view of decision of Hon'ble The Apex Court in **Ex. Sapper Mohinder Singh** (supra), it is unjust and illegal.

14. In the instant case, though the medical board has considered the disability as attributable to military service, the PCDA (P) Allahabad has wrongly rejected the disability claim of the applicant stating that the initial court of inquiry had declared the injury as not attributable to military service. There is no note of any disease or disability in the service record of the applicant at the time of enrollment. Since there is no evidence on record to show that the applicant was suffering from any disease at the time of his enrollment, it is presumed that the disability has occurred due to military service. In this case, the medical board has considered the disability attributable to military service. Therefore, the applicant 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 not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders deserve to be set aside and the applicant is entitled to disability pension @40% for life, which would stand rounded off to 50%. The applicant also deserves to be paid interest on the amount of arrears @ 9% per annum from the date of discharge.

16. Thus in the result, the Original Application No. 147 of 2014 succeeds and is allowed. The impugned order dated 05.09.2012 is set aside. The respondents are directed to

grant disability pension to the applicant@ 40% for life from the date of discharge, which would stand rounded off to 50% in terms of the decision of Hon'ble The Apex Court in the case of **Sukhvinder Singh vs. Union of India & others** (supra) and **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 the date of discharge till the date of actual payment. The respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

17. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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Dated : Feb 2016