Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 188 of 2015

Tuesday this the 12th day of January, 2016

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

Radha Charan
Son of Shri Sakte Lal aged about 50 years
Resident of Village-Gadrian Nagla, Post Maseni,
District-Farukhabad (U.P.)

…….. Applicant

By Legal Practitioner Shri P.K. Shukla, Advocate

Versus

1. Union of India through Secretary,
   Ministry of Defence (Army)
   West Block-2,
   R.K. Puram, New Delhi.

2. Chief of the Army Staff,
   IHQ MoD (Army)
   South Block, New Delhi.

3. The officer-in Charge,
   Record Officer of Records,
   Jat Regiment Bareilly
   C/o 56 APO.

4. Principal Controller of Defence Accounts (Pensions)
   Draupadi Ghat, Allahabad.

…… Respondents

By Legal Practitioner Shri Amit Jaiswal, 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:-

> *"A. This Hon'ble Tribunal may graciously be pleased to direct the respondents to set aside the order dated 31.08.1992, order dated 22.9.1993 and information dated 5.2.1993 and order dated 14.3.2007 and the order dated 2.12.2009 contained as ANNEXURE NO. 1, 2, 3, 4 & 5 to this original Application.*
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> *B. This Hon'ble Tribunal may graciously be pleased to direct the respondents to constitute afresh Review Medical Board for the assessment of the disability of the applicant and allow the disability pension as per rules.*
>
> *C. This Hon'ble Tribunal may graciously be pleased to direct the respondents to summon the records of Medical Board Proceedings of the applicant.*
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> *D. This Hon'ble Tribunal may graciously be pleased to pass any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.*
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> *E. This Hon'ble Tribunal may graciously be pleased to award the cost of the writ petition to the applicant."*

2. The factual matrix of the case is that the applicant was enrolled in 114 Inf. Bn. (Territorial Army) on 16.11.1987 and was discharged from service with effect from 31.12.1991 under Rule 14 (b) (iii) of the Territorial Army Rules 1964. Release Medical Board held before discharge, assessed his disability as 20% for 02 years for the disease **BICUSPID AORTIC**

VALVE and considered it neither attributable to nor aggravated by military service. His claim for disability pension was rejected vide order dated 22.01.1993 (communicated to applicant vide letter dated 05.02.1993) and subsequently his first and second appeals were also rejected vide order dated 12.12.1994 and 02.12.2009. Aggrieved, the applicant has filed the instant Original Application.

3. Heard Shri P.K. Shukla, learned counsel for the applicant, Shri Amit Jaiswal, 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 there was no disease detected at the time of enrollment and he has been discharged after completion of successful more than 04 years of service, as such, the applicant should be granted disability pension. He further submitted that keeping in view the judgment of **Sukhvinder Singh Vs. Union of India** reported in (2014) STPL (WEB) 468 SC and large number of other judgments passed by the Armed Forces Tribunals, he should be granted disability pension. Learned counsel for the applicant also made an oral submission that, though not contained in the pleadings, as per Government Order dated 31.01.2001, the disability pension be rounded off to 50%.

5. **Per contra**, learned counsel for the respondents submitted that the applicant was enrolled in 114 Inf. Bn. (Territorial Army) on 16.11.1987. While serving with 114 Inf.

Bn. (Territorial Army), deployed in Fatehgarh, the disease **BICUSPID AORTIC VALVE** was detected in his routine medical examination while he was embodied with effect from 03.10.1990 and was downgraded to low medical category CEE (Temporary) for six months with effect from 21.11.1990. On review, he was placed in low medical category BEE (Permanent) for two years with effect from 19.08.1991. Learned counsel for the respondents further submitted that the personnel downgraded to permanent low medical category are to be discharged from the Territorial Army "as service no longer required" in accordance with para 2 (c) of Army Order 460/1973. After holding Release Medical Board, the applicant was discharged from service with effect from 31.12.1991 under Rule 14 (b) (iii) of the Territorial Army Rules 1964. Release Medical Board recommended him to be released in medical category BEE (Physical) Permanent and assessed his disability at 20% for two years and considered it "Neither attributable to nor aggravated by military service" being disability due to congenital malformation. Disability pension was not granted because primary condition of Rule 173 of Pension Regulations (Part-I) 1961, i.e. the disability should either be attributable to or aggravated by military service was not met.

6. Relevant portions of the Pension Regulations for the Army 1961 (Part I) and 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 Pension Award, 1982**

"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 be given more liberally to the claimants in field/afloat service cases.*

Disease

14. In respect of diseases, the following rule will be observed:-

(a) cases…….

(b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for

reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

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20. 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. 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."*

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 in paras 11,12,13,17,18 and 19 of the judgment, 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 bahaviour 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. In **Union of India and Ors vs Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th 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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> *xxx xxx xxx*
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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.*
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> *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.*
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> 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 the peremptory direction of Hon'ble The Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was discharged or invalided out of service

on account of being in low medical category, if found suffering from some disability, would be entitled to the benefit of rounding off.

13. Having given due considerations to the submissions made by the learned counsel, we find that the applicant had been enrolled in a fit medical condition and he suffered the disability during his service as such in view of the judgment of the Hon'ble The Apex Court in the case of **Dharmvir Singh Vs. Union of India & others** (supra) and the subsequent judgment of the Hon'ble The Apex Court in the case of **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. We also converge to the view that, in view of law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh** (supra), in the interest of justice, the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

14. In the instant case medical board has not given any reasoned opinion on the basis of which it has been concluded that the applicant's disease is neither attributable to nor aggravated by service. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of his acceptance in service, it will be presumed that he was in sound physical and mental condition at the time of entering service and deterioration of his health has taken place due to service,

therefore, the applicant is entitled to the relief as per the above judgments of the Hon'ble the Apex Court.

15. In view of the above, we are of the considered view that the impugned orders passed by the respondents were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the respondents deserve to be set aside and the applicant is entitled to disability pension @20% for 02 years from the date of discharge and the same needs to be 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). We are of the view that the applicant also deserves to be paid the arrears of disability pension with interest @ 9% per annum from the date of discharge till the date of actual payment. 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 for further entitlement of disability pension, if any.

16. Thus in the result the O.A. No. 188 of 2015 succeeds and is allowed. Impugned orders dated 22.01.1993 (communicated to applicant vide letter dated 05.02.1993), 12.12.1994 and 02.12.2009 are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for 2 years 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 further directed to refer the applicant'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.

17. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated : Jan. 2016
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