RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1

O.A. No. 205 of 2013

Wednesday, this the 20th day of Jan, 2016

"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon'ble Lt Gen Gyan Bhushan, Administrative Member"

No. 15712875F – Ex. Rect. Prashant Raj, aged about 23 years, son of Shri Dayanand, Resident of village Sherandazpur, Post Office : Dalmau, Tehsil : Dalmau, District : Raebareli. U.P.

…….. **Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarter, South Block, New Delhi. 110011
3. DIR PS-4 AG's, Branch Integrated HQ of Min of Def (Army) DHQ PO New Delhi.
4. Commanding Officer/Officer in Charge, Records Office Signals, Jabalpur.
5. Senior Records Officer, Records Office Signals, Jabalpur.

…….Respondents

Ld. Counsel appeared for the Petitioner - Shri Somresh Tiwari advocate

Ld. Counsel appeared for the Respondent - Dr. Shailendra Sharma Atal, Sr Central Govt Counsel

ORDER

"Per Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member"

1. Present Original Application has been filed on behalf of the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007.

2. The applicant has sought following reliefs in the Original Application:-

> *"(i) To set aside the order dated 18.06.2010 as well as order dated 28.03.2011 as contained in annexure No. A&B to the original application.*
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> *(ii) To set aside the order dated 23.05.2013 contained in Annexure No. R-1 to counter affidavit to provide the applicant 100% disability pension and family pension as provided under the military service rule.*
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> *(iii) To issue any other appropriate order or direction this Hon'ble tribunal may deem fit and proper in the nature and circumstances of the case.*
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> *(iv) award cost of Original Application in favour of the applicants."*

3. Applicant was enrolled in the Army on 27.12.2008 and was discharged from service on 02.03.2009 under Army Rule 13 (3) Item (IV) on account of being in low medical category for the disease "ACUTE AND TRANSIENT PSYCHOTIC DISORDER (F-23.1)". Medical Board held prior to his discharge assessed the disability as 20% for life but considered the same as neither attributable to nor aggravated by military service. The claim for disability pension was rejected by the PCDA (P) Allahabad by means of communication dated 18.06.2010. The first appeal was rejected vide order dated 28.03.2011. The second appeal was said to be pending with the Appellate Committee but the Learned Counsel for the respondents repudiated the claim submitting that the second appeal was rejected by means of order dated 23.05.2013.

4. We have heard Learned Counsel for the Applicant as also Learned Counsel for the Respondents. We have also gone through the records in material aspects.

5. The submission of the Learned Counsel for the applicant quintessentially is that the Applicant at the time of recruitment was in good sound health. He was subjected to thorough medical examination at the time of recruitment. The Learned Counsel further submitted that looking to the fact that during his tenure in the Army which was less than one year, the disability that fell upon the applicant was to be presumed to have occurred in the course of military service. He further submitted that the medical board while opining that his disability was neither attributable nor aggravated by the military service has committed error as there was no valid basis for holding that the disability of the applicant was an off-shoot of constitutional disorder and was not connected with military service. He further submitted that no reasoned opinion was given in support of the claim that the disease was constitutional in nature.

6. **Per contra**, Learned Counsel for the Respondents dwelt on threadbare submissions, contending the applicant was discharged on the basis of medical report which succinctly cited his low medical category studded with further submission that the causative factor of the ailment of the applicant was not on account of military service as opined by the medical board, and that he was rightly denied the disability pension. Learned Counsel also relied upon Para 173 of Pension Regulations for the Army 1961 and according to Part I, the disability pension may be granted to an individual who is medically boarded out of service on account of disability which is attributable to or aggravated by Military service and assessed at 20% or above.

7. It would be pertinent to mention that initially order dated 23.05.2013 rejecting the second appeal was not assailed in the Petition. The Learned Counsel for the applicant explained that since he was under the assumption

that the second appeal was still pending, the same was not challenged. The challenge was introduced in the petition by way of amendment.

8. it would suffice to say 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. To sum up, Learned Counsel propped up the order of the PCDA (P), the order passed in first appeal and the order passed in second appeal.

9. The points that are involved for consideration have already been settled by catena of decisions including the decision 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).
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> 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)].
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> 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).
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> 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)].
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> 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)."

10. 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.
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> The following are some of the diseases which ordinarily escape detection on enrolment:
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> X x x x x x x x x x
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> (f) Disease which have periodic attacks, e.g. Bronchial Asthma, Epilepsy, CSOM etc."

11. We have traversed upon the relevant medical papers and from a punctilious reading of the medical papers and other allied papers; it would clearly 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 applicant was under treatment for the

disease at the time of his recruitment or that the disease was hereditary in nature.

12. 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. Thus the Applicant is held entitled for disability pension @ 30% for life from the date of discharge.

13. In connection with the above, we would like to refer to the decision of Hon'ble The Apex in the case **of Sukhvinder Singh Vs Union of India and Ors** reported in **2014 STPL (WEB) 468 SC.** In our view, the case is fully covered by the aforesaid decision of Hon'ble The Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *"disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.".* Para 9 of the judgment, being relevant is quoted below.

> *"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 provisions 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."***

14. In the above conspectus, we are of the considered view that the impugned orders dated 18.06.2010, 28.03.2011 and 23.05.2013 passed by the respondents rejecting his claim for disability pension were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the respondents thus deserve to be set aside and the applicant is held entitled to disability pension @ 20% for life from the date of discharge which would stand rounded off to 50% with interest at the rate of 9% per annum.

ORDER

15. Thus in the result, the O.A. succeeds and is allowed. The impugned orders dated 18.06.2010, 28.03.2011 and 23.05.2013 passed by the Respondents are set aside. The applicant is entitled for disability pension @ 20% for life from the date of discharge, and in the light of the decision of Hon'ble The Apex Court in **Sukhvinder Singh** (supra), the disability pension would stand rounded off to 50%. Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum from the date of discharge till the date of actual payment. The Respondents are further 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 V.K. DIXIT)
Member (J)

Date: Jan. ,2016

MH/-