

**Court No.1**  
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 47 of 2015**

Wednesday this the 10<sup>th</sup> day of February, 2016

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

Ram Naresh (No.6492047F Ex Sepoy (ASH), S/o  
Sri Ganga Dayal, Aged about 35 years, R/o  
Village- Pure Bhusu, Post- Malke Gaon,  
District – Rae Bareli -229 215,  
State – Uttar Pradesh

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, through, the Secretary,  
Ministry of Defence, Government of India,  
New Delhi
2. Chief of the Army Staff, Integrated  
Headquarters of Ministry of Defence  
(Army) DHQ Post Office New Delhi.
3. The Officer In-Charge, ASC Records (AT)  
PIN-900493 C/o 56 APO
4. The Chief Controller Defence Accounts,  
Draupadi Ghat Allahabad (UP)

..... Respondents

By Legal Practitioner Shri Sunil Sharma, 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) The Hon’ble Tribunal may be pleased to set aside the orders dated 29.04.2013 (Annexure A-1) and order dated 12.12.2014 (Annexure No. A-6).*

*(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.05.2013 along with its arrears and interest thereon at the rate of 18% per annum.*

*(III) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 25.04.1996 and was discharged from service on 30.04.2013 (afternoon) 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 20% for life for the disease **“PIVD L4-5, L5-S1”** and considered it as not attributable to military service and as aggravated by military service. Claim for disability pension of the applicant was rejected vide order dated 29.04.2013 and subsequently, his appeal was also rejected vide order dated 12.12.2014. Aggrieved, the applicant has filed the instant Original Application.

3. Heard Shri R. Chandra, Learned Counsel for the applicant, Shri Sunil Sharma, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was recruited in the Indian Army after proper medical examination and he was considered medically fit for service in the Army. There is no note of any disability at the time of enrollment of the applicant. The medical board has considered the applicant's disability as aggravated by military service, as such as per Para 173 of the Pension Regulations for the Army 1961 (Part I), the applicant is entitled to grant of disability pension. Learned Counsel for the applicant said that in catena of judgments delivered by the Armed Forces Tribunal as well as the Hon'ble The Apex Court, similarly situated persons have been granted disability pension, therefore, prayed that the applicant may be granted disability pension.

5. **Per contra**, Learned Counsel for the respondents submitted that though the applicant's disability was considered as aggravated by military service due to physical stress and strain. However, the medical board though has assessed the disability as 20% for life, has considered the applicant's disability for the purposes of pension as Nil for life, since the applicant refused to undergo operation/treatment, which could have cured and reduced the disability by 60 to 70%. He further submitted that the applicant's first appeal was also rejected.

6. The fact about refusal to undergo operation/treatment prior to his discharge has been denied by the Learned Counsel for the applicant as given in Para 3 of Rejoinder Affidavit.

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.*



*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 **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 1<sup>0th</sup> 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





12. In the instant case, the PCDA (P) Allahabad has rejected the disability claim of the applicant on the ground that medical board had considered the applicant's disability as 20% for life but for the purposes of pension as Nil for life, since the applicant had refused to undergo operation/treatment, which could have cured and reduced the disability by 60 to 70%. The applicant has served for approx 17 years and has been discharged in low medical category and meets all conditions for grant of disability pension, as such he should not be denied disability pension only because he has refused to undergo operation prior to his release. The fact about refusal to undergo operation prior to his discharge has been denied by the Learned Counsel for the applicant as given in Para 3 of Rejoinder Affidavit. There is no note of any disease or disability in the service record of the applicant at the time of enrollment. In fact, medical board in their opinion at page 5 in the column "**Did the disability exist before entering service**" has mentioned '**NO**'. There is no evidence on record to show that the applicant was suffering from any disease at the time of his enrollment, 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 applicant and he is entitled to the relief.

13. 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 @ 20% 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.

14. Thus in the result, the Original Application No. 47 of 2015 is allowed. The impugned orders dated 29.04.2013 (Annexure A-1) and the order dated 12.12.2014 (Annexure No.A-6) are set aside. The respondents are directed to grant disability pension to the applicant @ 20% 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 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.

15. No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

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

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Dated : Feb 2016