

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

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 69 of 2014**

Thursday this the 11<sup>th</sup> day of February, 2016

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

No. TC-31479F Lt Col (Retd) Adi Shanker Mishra,  
aged about 65 years s/o Late Shri Ganga Sewak Mishra,  
R/o House No.133-E, Sainik Nagar, Rae Barely Road,  
Lucknow (UP) – 226 025

..... Applicant

By Legal Practitioner Shri Shailendra Kumar Singh,  
Advocate

Versus

1. Union of India, through the Secretary,  
MOD, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters,  
Ministry of Defence, South Block-III,  
New Delhi-110011.
3. Defence Ministry's Appellate Committee on  
Pension, Ministry of Defence (D(Pen/Appeal), Room  
No.235 'B' Wing, Sena Bhawan, New Delhi-11
4. ADGM (Policy & Planning) MP-6(E)  
Adjutant General's Branch, Integrated of HQ/MoD  
(Army), West Block-III, R.K. Puram, New Delhi -66,
5. PCDA (Pension) Draupadi Ghat,  
Allahabad (UP) – 211014

..... Respondents

By Legal Practitioner Shri Sidharth Dhaon, 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. to summon the Release Medical Proceedings and quash the findings of the same to the extent where applicant’s disability has been held as neither attributable to nor aggravated by Military service by the RMB as the same is inconsistent to the initial medical board proceedings of Mar 2007.*
- B. to summon the disposal / decision of the Defence Minister’s Appellate committee on Pension on applicant’s second appeal dated 10 Dec 2010 and quash the same, if rejected.*
- C. to issue /pass an order or direction of appropriate nature to the Respondents to grant disability pension to the applicant with effect from 01 Aug 2009 (date of retirement) for the disability of 20% as assessed by initial medical board held in Mar 2007 as the said disability was aggravated due to operational services.*
- D. to issue /pass an order or direction of an appropriate nature to the respondent to grant the benefit of rounding off to the 50% in terms of Govt of India letter dated 31 Jan 2001.*

- E. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*
- F. Cost of the application may be awarded to the applicant.”*

2. Undisputed facts of the case are that the applicant was commissioned in the Indian Army (Army Postal Service) on 14.06.1993 and retired from service on attaining the age of superannuation on 01.08.2009. Prior to his commissioning, the applicant had served in the Indian Army (Army Postal Service Branch) from December, 1972 to June, 1993, though in paragraph 4 of the counter affidavit, the respondents have mentioned that the applicant's service before commissioning was from 16.12.1972 to 13.06.1983, but have accepted it as a typographical error and have agreed that it was till 13.06.1993. The medical board held prior to his retirement, assessed his disability as 20% for life for “**Seminoma Testis Left (OPTD) Stage III**”, but considered it neither attributable to nor aggravated by military service. Claim for disability pension of the applicant was rejected vide order dated 22.07.2009 and his first appeal was also rejected vide order dated 06.05.2010. Aggrieved, the applicant has filed the instant Original Application with delay, which has been condoned vide this Tribunal's order dated 10.03.2014.

3. Heard Shri Shailendra Kumar Singh, Learned Counsel for the applicant, Shri Sidharth Dhaon, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that at the time of enrollment in the Indian Army as well as at the time of commission, he was medically fit and the problem

started in September, 2006. Onset of medical problem started in 2006, i.e., during course of the service, as such the disability should be considered as attributable to and aggravated by military service as per law laid down by the Hon'ble Apex Court in the case of **Dharmvir Singh Vs. Union of India & others** reported in (2013) 7 SCC 316. After rejection of first appeal, the applicant forwarded second appeal on 10.12.2010 followed by reminder dated 08.04.2013 and despite direction of the Tribunal till now the respondents have failed to intimate the decision on the applicant's second appeal, as such The Tribunal should impose fine on the respondents for failure on their part in taking decision on the applicant's second appeal.

5. He further submitted that since the applicant was at the time of enrollment in the Indian Army as well as at the time of commission, he was medically fit and the problem with regard to his health started in 2006, i.e., during service period, as such the disability should be considered as attributable to and aggravated by 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 the disability of the applicant has been assessed as 20% for life, but since it has been considered as neither attributable to nor aggravated by military service, his claim of disability pension has been rejected. He further submitted that as per Para 173 of Pension Regulations for the Army, 1961 (Part –I), disability pension is admissible to an individual who is invalided out of service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. Since the applicant

was not fulfilling the primary conditions, he had rightly been denied the disability pension.

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.

XXX XXX XXX XXX

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).

XXX XXX XXX

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”.*

*XXX*

*XXX*

*XXX*

*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.*

xxx

xxx

xxx

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 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.*

xxx

xxx

xxx

*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.”*

11. 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 has retired from service on attaining the age of superannuation in low medical category, if found to

be suffering from some disability, would also be entitled to the benefit of rounding off.

12. 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 applicant.

13. In the instant case, there is no note of any disease or disability in the service record of the applicant at the time of enrollment in the Indian Army as well as at the time of commission. Since there is no evidence on record to show that the applicant was suffering from any disease at the time of his enrollment and the problem started in 2006, it is presumed that the disability has occurred due to military service. Therefore, the applicant is entitled to the relief as per the judgments of the Hon'ble The Apex Court cited above.

14. 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 retirement.

15. Thus in the result, the Original Application No. 69 of 2014 succeeds and is allowed. The impugned order dated 22.07.2009 and 06.05.2010 are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life from the date of retirement, 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 retirement 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.

16. No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

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

Sry

Dated : Feb 2016