

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
COURT NO 1

O.A. No. 210 of 2011

Tuesday, this the 09th day of February, 2016

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

Ex. Ris (Rdr) Chhatar Singh, resident of House No. G 165, Pandav
 Nagar, Meerut U.P.-250001.....**Applicant**

Versus

1. Union of India through Ministry of Defence, Sena Bhawan New
 Delhi through its Secretary.
2. Director General Personnel Services, Adjutant Generals Branch,
 Integrated Head Quarter of Ministry of Defence (Army) DHQ P.O.
 New Delhi 110011.
3. The P.C.D.A (P) Allahabad
4. The Officer Incharge Records- RVC PIN 900468 C/O 56 APO.

.....**Respondents**

Ld. Counsel appeared for the Applicant

**- Shri P.S. Sisodia,
 Advocate**

Ld. Counsel appeared for the Respondent

**- Shri Namit Sharma,
 Central Govt Standing
 Counsel**

ORDER**“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**
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1. Present 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 following reliefs:-

"i. Issue a writ, order or direction in the nature of certiorari quashing the impugned order communicated by letter dated 15.02.2010 (Received on 22.02.2010) Annexure-1 to the present application alongwith order dated 24.04.2008 passed by Ist Appellate Committee on pension Annexure-2 to the present application as well as decision dated 18.01.2007 of Additional Director General Personnel Service Adjutant General Office Annexure-3 to the present application and the initial impugned order passed by the Medical Board dated 09.12.2005 by which applicant has been discharged from service.

ii. Issue a writ, order or direction in the nature of mandamus commanding the concerned authorities to pay the disability pension on 30% disablement w.e.f 01.01.2006 in the light of medical/Administrative provision alongwith payment of all the arrears of disability pension.

iii. Issue any suitable writ order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case."

2. The facts in short are that the Applicant was enrolled in the Army on 26.07.1977 and after serving 28 years, 5 months and 6 days, was discharged w.e.f 31.12.2005 under the provisions of Army Rule 13(3) (I) (ii) on account of being in low medical category on the recommendations of Release Medical Board which assessed the composite disability as 30% for life. According to the Medical report, the Release Medical Board assessed "**Type II Diabetes Mellitus E-11 Z-09**" as 1-5% and "**Primary Hypertension I-10**" as **30%** for life. The composite disability as stated supra was assessed as 30%

for life, but at the same time, the Medical Board opined it to be constitutional and not related to military service. The claim for disability pension was rejected by the PCDA (P) vide order dated 18.01.2007. The first Appeal was rejected vide order dated 24.04.2008. The second appeal of the Applicant was also rejected vide order dated 15.02.2010. Aggrieved, the Applicant filed the Present O.A.

3. The submission of Learned Counsel for the Applicant substantially is that the only ground on which the claim for disability pension of the Applicant was rejected was that the Medical Board had opined the disability to be not connected with the Military service. To rephrase it, it was opined to be neither attributable to nor aggravated by the Military service. In this connection, he referred to the decision of Hon'ble The Apex Court in **Dharamvir Singh (2013) 7 Supreme Court Cases 316**, and submitted that in the said decision, the Apex Court had clearly ruled 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.

4. **Per contra**, learned counsel for the respondents submitted that the disease of the Applicant being constitutional and not related to military service as opined by the Medical Board, the Applicant was not entitled to disability pension attended with further submission that if an individual is aggrieved by assessment of IMB/RMB, he should request for Review Medical Board and that the decision of Review Medical Board would be final. No such request was made by the Applicant either during service or after being discharged and

hence the Application is liable to be dismissed in limine. He also submitted that the Medical Board being expert body, its opinion cannot be assailed.

5. We have given our anxious considerations to the submissions advanced by the learned counsel for the parties. We have also gone through the materials on record.

6. Having considered the rival submissions, we are of the view that looking to the facts and circumstances of the case, the present case being squarely covered by the decisions of Hon'ble The Apex Court 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, the ratios flowing from the aforesaid decision can well be imported for adjudication of the present case. The legal position emerging from the same may be summed up 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).

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)].

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).

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)].

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)."

7. 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.

The following are some of the diseases which ordinarily escape detection on enrolment:

X x x x x x x x x x

(f) Disease which have periodic attacks, e.g. Bronchial Asthma, Epilepsy, CSOM etc."

8. No doubt, the service rendered by the Applicant was more than 28 years. The twin diseases afflicting the Applicant are type II diabetes and Hypertension which he suffered at the fag-end of the career in the Military service. It has not been denied that the Applicant was subjected to sustained and thorough medical examination at the time of entry in the military service. 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.

9. Thus, following the ratios flowing from 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, the Applicant is held entitled for disability pension @ 30% for life from the date of discharge.

10. Since the Applicant has been held entitled to disability pension, referring to the oral prayer made by Learned Counsel for the Applicant in Para 3 of this judgment/order for the relief of rounding off of disability pension, we are of the view that regard being had to the decision of **Sukhvinder Singh** reported in **(2014) STPL (WEB) 468 SC**. the substance of which is "*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*" and also considering the principles laid down by Hon'ble The Apex Court in **Union of India vs Ram Avtar (supra)**, we are of the view that the disability assessed as 30% for life shall stand rounded off to 50% for life.

11. In view of the above, we are of the considered view that the impugned orders passed by the Respondents dated 18.01,2007, 24.04.2008 and 15.02.2010 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 held entitled to disability pension @30% from the date of discharge for life as recommended by the Medical Board with interest on the amount due at the rate of 9% per annum.

ORDER

12. Thus in the result, the O.A. succeeds and is allowed. The impugned orders 18.01,2007, 24.04.2008 and 15.02.2010 passed by the Respondents are set aside. The Applicant is held entitled for disability pension @ 30% for life from the date of discharge. 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% for life. 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.

13. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Date: Feb. ,2016

MH/-