

**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1

**O.A. No. 33 of 2014****Tuesday, this the 12<sup>th</sup> day of Jan, 2016****“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

Ex- Recruit/Clerk Greesh Kumar (Army No. 15618015P) of Brigade of the Guards Regimental Centre, Kamptee, aged about 27 years, son of Shri Dafedar Singh, resident of Village- Nagla Jahari, Post-Udesar, District-Firozabad (U.P.).

.....**Applicant**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Officer-in-Charge Records, The Brigade of the Guards, Kamptee Cantt. Nagpur (Maharashtra).
4. Commandant, Brigade of Guards, Regimental Centre, Kamptee Cantt. Nagpur (Maharashtra).
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad

.....**Respondents**

**Ld. Counsel appeared for the Applicant**

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**Shri K.K.Singh Bisht,  
Advocate**

**Ld. Counsel appeared for the Respondents**

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**Shri Namit Sharma,  
Addl. Central Govt. Counsel**

**ORDER**

**“Per Hon’ble 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. The reliefs claimed in this Application are as under:

*"(a) Issue/pass an order or direction of the appropriate nature to the respondents to quash/set aside the arbitrary and illegal PCDA (Pension) Allahabad vide letter No G-3/97/115/604 dated 28.10.2004 rejecting the disability pension claim to him.*

*(b) Issue/pass an order or direction of the appropriate nature to the respondents to quash/set aside the arbitrary and illegal rejection of First Appeal by the Appellate Committee on First Appeals (ACFA) vide Additional Directorate General Personnel Services, Integrated Headquarters of MoD (Army), New Delhi Letter No. B/40502/1427/06/AG/PS-4 (Imp. II) dated 23.03.2007 (Annexure No. A-5).*

*(c) Issue/pass on order or direction of the appropriate nature to the respondents to quash/set-aside the rejection of the disability pension claim by the Second Appellate Committee on Pension vide Government of India, Ministry of Defence letter No. 1 (495)/2007/D(Pen/Appeal) dated 04.08.2008 (Annexure No A-6).*

*(d) Issue/pass an order or direction of the appropriate nature to the respondents to grant the disability pension to the applicant to the extent of 30% as decided by the Invaliding Medical Board with effect from 08.01.2004 which as per policy would be 50% disability pension.*

*(e) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(f) Allow this application with costs.”*

2. The factual matrix of the case is that the Applicant was enrolled in the Indian Army on 15.08.2003 and was discharged on 08.01.2004 under Army Rule 13 (iii) (iv) based on the recommendation of the Medical Board held prior to his discharge placed the Applicant in

category "S-5". The Medical Board diagnosed his disease as "OTHER NON ORGANIC PSYCHOTIC" and assessed his disability as 30% for five years and opined that the disability of the applicant was neither attributable to nor aggravated by the military service. The first appeal and the second appeal preferred by the applicant were rejected vide order dated 23.03.2007 and 04.08.2008 respectively. Aggrieved, the applicant filed this Original Application.

3. We have Learned Counsel for the Applicant and Learned Counsel for the Respondents and perused the relevant record.

4. The Learned Counsel for the Applicant has submitted that Medical Board has erroneously assessed that the disability of the Applicant was neither attributable to nor aggravated by the Military Service without regard being had to the facts that the Applicant had suffered disability due to stress and strain of Military service. He further submitted that at the time of enrolment he underwent proper medical check up and was considered medically fit. He also submitted that no note had been made in the initial medical report about any dormant disease. He denied the suggestion that there was any genetic factor as no member of the family had suffered from the disease "OTHER NON ORGANIC PSYCHOTIC". He has further submitted that the law is well settled now that a disease which has led to an individual's discharge will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance in the service. He also submitted that assessment of disability for attributability is to be ascertained in accordance with Regulation no. 153 and Rules 5, 14 (b), 14 (c) and 15 of Entitlement Rules for Casualty Pensionary Awards, 1982. He also submitted that as per Rules 9, 5(b) and 14 (b) of the Entitlement Rules the Board ought

to have given specific findings in its report as to why disability is not deemed to be attributable to service particularly when the respondent was not affected with any disease at the time of his enrolment in the Army.

5. **Per contra**, Learned Counsel appearing for the Respondents repudiated the submissions contending that the disability of the Applicant was assessed to be neither attributable to nor aggravated by Military Service. He further contended that the Applicant's disability was rightly assessed at 30% for five years by the Medical Board. He also submitted that the Medical Board which is an expert body has clearly expressed its opinion that the disability suffered by the Applicant was neither attributable to nor aggravated by service and constitutional in nature. He has also submitted that the record clearly shows that the onset of disability of the Applicant had surfaced within one month of his enrolment. It is next submitted that after rejection of second appeal, the Applicant kept quiet and instituted the Original Application after efflux of 8 years.

6. On the question of delay, Learned Counsel refuted that the Original Application was instituted after efflux of more than 8 years. He however, conceded that there was delay of 4 years and that too occurred on account of his impoverished condition being in financial straits. The delay has been condoned vide our Order dated 30.01.2014.

7. We have given our anxious considerations to the rival submissions as aforesaid. We have also been taken through the materials on record.

8. Without swelling the judgment by unnecessary quotations of the Rules and Regulations on the point, 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 orders rejecting the claim for disability pension.

9. In connection with the above plea, we would like to refer to the decisions of Hon'ble The Apex Court. The first decision is **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).*

*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)."*

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.*

*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."*

11. 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 judgement, 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 behaviour 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 Mr 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.

12. 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 dormant 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 or for matter of that any other disease at the time of his recruitment or that the disease was hereditary in nature.

13. 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 the Hon'ble The Apex Court decided similar controversy and converged to the conclusion that 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 will be deemed to have arisen in service and further that 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. Hon'ble The Apex Court further postulated that it was 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. The aforesaid decision has been considered with approval in **Union of India vs Rajbir Singh (2009) 9SCC 140** and **Sukhvinder Singh Vs Union of India (2014) STPL (WEF) 468**.

14. Having considered the facts and circumstances of the present case and regard being had to the ratio flowing from the above cited decisions, we are of the firm view that the Applicant is entitled for disability pension @ 30% for five years from the date of discharge and that the impugned orders dated 28.10.2004, 23.03.2007 and 04.08.2008 passed by the Respondents rejecting his claim for disability pension are not only unjust, illegal but also are 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 @ 30% for five years from the date of discharge which would stand rounded off to 50% as per judgment of The Hon'ble Apex Court in **Union of India and Ors v Ram Avtar & ors vide Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**. The applicant also deserves to be paid interest @ 9% per annum on the amount due. Since the Medical Board assessed the disability of the Applicant as 30% for five years, the Re-Survey Medical Board of the Applicant needs to be carried out to assess the percentage of disability for further claim of disability pension, if any as per decision in case of **Veer pal** (supra).

#### **ORDER**

15. Thus in the result, the Original Application succeeds and is allowed. The impugned orders dated 28.10.2004, 23.03.2007 and 04.08.2008 passed by the Respondents are set aside. The Applicant is entitled for disability pension @ 30% for five years from the date of discharge. The disability would stand rounded off to 50% in terms of The Apex Court in Judgment in **Union of India and Ors v. Ram Avtar & ors vide Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**. 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 refer the case to Re-Survey Medical board for re-assessing the medical condition of the applicant for further entitlement of disability pension, if any. 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/-