

**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
COURT NO. 1

**T.A. No. 1026 of 2010**

**Wednesday, this the 4<sup>th</sup> day of November, 2015**

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member  
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

Bhairun Singh son of Shri Gurudeo Singh, Resident of 6/107, L.I.G,  
Avas Vikas Colony, Plan-,3 Jhunsi, Allahabad.

**.... Petitioner**

Versus

1. Union of India through Secretary Ministry of Defence, New Delhi.
2. Commandant, Central Defence Accounts (Pension) Allahabad, &  
CCDA (P), Allahabad.
3. Commandant, 158, Base Hospital

**.... Respondents**

**Ld. Counsel appeared for the Petitioner      Mrs. C.K.Chaturvedi,  
Advocate**

**Ld. Counsel appeared for the Respondent -Shri Ishraq Farooqui,  
Sr.Central Government  
Counsel**

**ORDER****“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**

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1. The matter in hand has come up before us by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon’ble the High Court at Allahabad and it has been renumbered as Transferred Application No.1026 of 2010.

2. The reliefs claimed in the T.A. filed by the Petitioner are excerpted below :-

“(i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 14.06.2000 including the rejection order of CCDA (P) Allahabad vide Letter No. G-3/57/71/2-98 dated 09.07.1998 referred to in (Annexure No.-3 to this Writ Petition) passed by the Appellate Authority and CCDA (P) contrary to the settled view of this Hon’ble Court.

(ii) Issue a Writ Order or direction in the nature of mandamus directing the respondents to pay the disability pension of the Petitioner w.e.f the due date alongwith the interest at the bank rate.

(iii) Issue a writ order or direction as this Hon’ble Court may deem fit and proper in the circumstances of the case.

(iv) Award the cost of the Writ Petition in favour of the petitioner.”

3. The admitted and undisputed facts of the case are that the petitioner was enrolled in the Army on 28.06.1995 and was

invalided out of service on the ground of being in low medical category 'EEE' (Psychological) on 22.03.1997 under Army Rule 13 (3) III (iii). Before discharge, the Petitioner was medically examined by the Medical Board on 21.02.1997 which diagnosed him to be suffering from "SCHIZOPHRENIA- 295" and opined his disability at 20% for two years attended with opinion that his disability was neither attributable nor aggravated by Military service. The claim for disability pension was rejected by the PCDA (P) on 09.07.1998. This led the Petitioner to prefer an appeal which also culminated in being rejected vide order dated 14.01.2000 on the self-same ground that disability was neither attributable to nor aggravated by Military Service.

4. We have heard Learned Counsel for the Petitioner as also Learned Counsel appearing for Union of India. We have also gone through the materials on record.

5. The Learned Counsel for the Petitioner assailed the impugned orders on the grounds that at the time of recruitment, the Petitioner was medically fit. Prior to joining Military service, the Petitioner was medically examined and no note of expecting the onset of such disease was recorded; that the appellate authorities did not examine the case in the light of the Rules and Regulation; that the orders of the appellate authorities are not reasoned and speaking orders submitting further that a disease which led to an individual's discharge would ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's entry in the service of Armed Forces. The Learned

Counsel has also referred to various decision of this Tribunal as also Hon'ble The Apex Court to prop up his stand in the case.

6. **Per contra**, Learned Counsel appearing for Union of India contended that the Petitioner was initially admitted to 178 Military Hospital on 12.11.1996 and then he was transferred to 158 Base Hospital on 14.11.1996. He was examined by the Medical Board on 02.03.1997 and there he was diagnosed to be suffering from "SCHIZOPHRENIA- 295" which commended his case for being invalided out of service. However, the disability of the Petitioner was assessed at 20% for two years and he was ultimately discharged from service on 22.03.1997. It is further contended that since disability of the Petitioner was assessed as neither attributable to nor aggravated by Military service, the claim for disability pension was rejected by the authorities concerned, his being nor entitled for disability pension as per Paragraph 173 of Pension Regulations 1961 (Part-1). It is further contended that according to the opinion of Classified Specialist (Psychiatry), the disease was constitutional in nature and not related to service attended with opinion that the disease inhered the Petitioner prior to his entry in the Military service and could not have been detected by the Recruiting Medical Board.

7. The law has been well settled by catena of decisions rendered by Hon'ble the Apex Court on the point that if the disability is said to be not attributable to military service, it is incumbent on the part of Medical Board to call for records and look into the same before converging to an opinion that the

disease could not have been detected on medical examination prior to the acceptance for military service. The relevant portions of the decisions germane to the point are excerpted below.

8. The first decision on the point is **Dharamvir Singh Vs. Union of India and Ors reported in (2013) 7 Supreme Court Cases 316**, in which Paras 29.6, 29.7, 30, 31, 33, 34 and 35 of the judgment, being relevant are quoted below:-

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 been 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 (Military Pension), 2002 -"Entitlement : General Principles", including paragraphs 7,8 and 9 as referred to above (para 27).*

30. *We, accordingly, answers both the questions in affirmative in favour of the appellant and against the Respondents.*

31. *In the present case it is undisputed that No. note of any disease has been recorded at the time of 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 mil service"***

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 'Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In 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.*

34. *As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of disability of death resulting from disease is or is not attributable to service. It is immaterial whether the cause giving rise to disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions.*

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. The next decision on the point is **Veer Pal Singh vs. Ministry of Defence reported in (2013) 8 SCC 83** in which paras 11,12,13,17,18 and 19 of the judgment being relevant are quoted below:-

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.*

10. In the case of Sukhvinder Singh Vs. Union of India and Ors reported in 2014 STPL(Web) 468 SC, in para 9 of the judgment, the observation made by Hon'ble The Apex Court is 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. 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."*

11. Again on the question of Attributability, we feel called to refer to the decision of Hon'ble The Apex Court **in Union of India vs. Rajbir Singh**, reported in **(2009) 9 SCC 140**. In this case, Hon'ble the Apex Court considered all the above decisions and observed as under:

*"16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains un-rebutted.*

*Since the disability has in each case been assessed at more than 20% their claim to disability pension could not have been repudiated by the appellants."*

12. In the instant case, the Medical Board has expressed its opinion that the disease is not attributable to, or aggravated by service but the Respondents have failed to notice that the Medical Board had not given adequate reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the Petitioner at the time of acceptance for Army service. All that has been opined by the Medical Board is to the effect that the disease was constitutional in nature and that it inhered the Petitioner prior to his entry in the Military service but this contention does not commend to us for acceptance as at the time of recruitment thorough medical check-up was carried out and the Petitioner was found medically fit inasmuch as there is no mention of such disease existing. The Pension Sanctioning Authority has passed the impugned order of rejection based on the report of the Medical Board. In absence of any evidence on record to show that the Petitioner was suffering from "**SCHIZOPHRENIC (295)**" at the time of his acceptance in service, it will be presumed that the Petitioner was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place during Military service.

13. In view of the law laid down by Hon'ble The Apex Court in the cases of **Dharamvir Singh (Supra), Veer Pal Singh**

**(Supra) and Sukhvinder Singh (Supra)**, in the instant case admittedly the Petitioner at the time of joining the Army service was in sound physical and mental condition as no note of any disability or disease was made at the time of Petitioner's acceptance for Army service. In this view of the matter, the opinion of the Medical Board that the disease is not attributable to or aggravated by Army Service is not at all justified.

14. In the above conspectus, we are of the considered view that the impugned orders passed by the Respondents dated 14.06.2000 and 09.07.1998, were not only unjust, illegal but also were not in conformity with rules, regulations and law. Thus the impugned orders aforesaid deserve to be set aside and the Petitioner is entitled to disability pension @20% from the date of discharge for two years with interest at the rate of 9% per annum which would stand rounded off to 50% regard being had to the ratio flowing from the decision of **Sukhvinder Singh (supra)**, 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 and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**).

15. On the question of Resurvey Medical Board, considering the decision of Hon'ble The Apex Court in **Veer Pal Singh (Supra)**, we are of the view that in the interest of justice, the case of

Petitioner be referred to the Re-Survey Medical Board for re-assessing the medical condition of the Petitioner for further entitlement of disability pension, if any.

**Order**

16. Thus in the result, the Transferred Application succeeds and is allowed. The impugned orders passed by the Respondents dated 14.06.2000 and 09.07.1998, are set aside. The Petitioner is entitled to disability pension @ 20% from the date of discharge for two years as recommended by Medical Board which would stand rounded off to 50% as per policy and regard being had to the decisions of Hon'ble The Apex Court in **Sukhvinder Singh** (supra), and also in **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014**). We direct the Respondents to pay the arrears of the aforesaid disability pension alongwith interest @ 9% per annum till the date of payment. The Respondents are directed to refer the case to Re-Survey Medical Board for re-assessing the medical condition of the Petitioner for further entitlement of disability pension, if any. The Respondents are further directed to comply with the order within three months from the date of production of a certified copy of this order.

17. No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**  
 Date : Nov, , 2015

**(Justice Virendra Kumar DIXIT)**  
**Judicial Member**

MH/\*





