

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1****Transferred Application No. 1468 of 2010**

Friday, this the 22nd day of January, 2016

Hon'ble Mr. Justice V.K. DIXIT, Member (J)

Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex Subedar Surendra PD Singh, aged about 52 years, son of Sri. Sheo Govind Singh, resident of EWS 500 - 501, Ravi Khand, Eldeco Udyan – I, Post Office – Bhadrakh, District – Lucknow.

..... Petitioner

By Legal Practitioner Shri P.N. Chaturvedi, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. The Chief of Army Staff, Integrated Headquarter of Ministry of Defence (Army), South Block DHQ, New Delhi – 110011.
3. The Principal Controller of Defence Accounts (Pension) (PCDA (P)) Dropdi Ghat, Allahabad.
4. ESM Helpline, C/o Headquarter Central Command, 95, Usman Road, Lucknow Cantt – 226002.
5. Signal Records, Post Bag No. 5, Jabalpur (M.P.).

..... Respondents

By Legal Practitioner Shri Sunil Sharma, Sr. Central Govt Counsel

ORDER

“Hon’ble Mr. Justice V.K. DIXIT, Member (J)”

1. Initially, the petitioner had filed writ petition No.5868 before the Hon’ble High Court of Judicature at Allahabad, which after constitution of the Armed Forces Tribunal has been transferred to this Bench of the Tribunal and registered as T.A. No. 1468 of 2010. The petitioner has claimed the reliefs as under:-

*“(i) Issue a writ, order or direction in the nature of ‘Certiorari’ quashing the arbitrary and capricious order dated 04-08-2008 passed the Respondent No. 1 rejecting the Second Appeal of the petitioner, as contained in **Annexure No. 1** to this writ petition.*

(ii) Issue a writ, order or direction in the nature of ‘Mandamus’ commanding the opposite parties to grant 40% Disability Pension to the petitioner which as per the procedure in vogue will be 50%.

(iii) To issue order/direction to the respondents to quash Signal Records Jabalpur letter No. P/JC-370485/DP-3/NER dated 14.3.2005 rejecting the Disability Pension claim without application of mind and against the relevant provisions on the subject.

(iv) To quash Signal Records Jabalpur No. P/JC-370485/DP-4/NER dated 28-3-2007 under which the First Appeal made by the applicant has been rejected by Army HQ (AG PS 4) (d) letter No. B/40502/419/06/AG/PS-4, dated 29 Dec 2006 without application of mind and against the relevant provisions on the subject.

(v) To summon all original records to the proceeding of the case of the petitioner.

(vi) Issue any other writ, order or direction which this Hon’ble Court may deem just, fit and proper under the circumstances of the case.

(vii) Award exemplary cost of the writ petition to the petitioner.”

2. The petitioner was enrolled in the Indian Army on 20.09.1976 and was discharge from service on 30.09.2004 (afternoon) under Army Rule 13 (3) item 1 (i) (a) read in conjunction with sub rule 2A. The medical board held before his discharge considered his disability for disease

“III CRANIAL NERVE PALSY (LT) – 343” as neither attributable to nor aggravated by military service and assessed the disability @ 40% for life. The claim for disability pension was rejected vide order dated 14.03.2005 and subsequently the first appeal and second appeal were also rejected vide order dated 29.12.2006 and 04.08.2008 respectively. Aggrieved, the petitioner filed writ petition in the Hon’ble High Court of Judicature at Allahabad, which subsequently stood transferred to this Tribunal and registered as Transferred Application.

3. Heard Shri P.N. Chaturvedi, Learned Counsel for the petitioner, Shri Sunil Sharma, Learned Counsel for the respondents and perused the records.

4. Learned counsel for the petitioner submitted that he was enrolled in the Indian Army after he was subjected to thorough medical examination and he was found physically and mentally fit and he served in the Army for more than 28 years. He had developed trouble in his right eye when he was posted in intensely militant infested and inhospitable terrain in Jammu and Kashmir in the year 2001, due to stress and strain of service. He further submitted that in view of above the disability pension should be granted to the petitioner.

5. **Per contra**, learned counsel for the respondents submitted that the release medical board of the petitioner held on 16 Mar 2004 had opined his disability as neither attributable to nor aggravated by military service and his disability was assessed @ 40% for life. Petitioner has not been granted disability pension, because his disability, though assessed as 40% for life, has been considered as neither attributable to nor aggravated by military service. Therefore, the petitioner was not

fulfilling the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations for the Army, 1961 (Part –I), which clearly states that pension may be granted to an individual who is invalided from service on account of disability, which is attributable to or aggravated by military service. He further submitted that disability pension of the petitioner has correctly been rejected as per laid down policy.

6. 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.

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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.”

7. 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).

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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”.

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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."*

8. **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. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent 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 percent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension."

9. In **Union of India vs. Rajbir Singh, Civil Appeal No.2904 of 2011 decided on 13.02.2015**, Hon'ble The Apex Court has held 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 unrebutted. 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.”

10. In **Union of India and Ors vs. Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th 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.

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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. The appeals were dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded in approval with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. This direction of Hon'ble The Apex Court leads us to the conclusion that the applicant, who was discharged from service on account of his being in low medical category on completion of his tenure of engagement 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), **Sukhvinder Singh Vs. Union of India** (supra) and **Union of India & others vs. Rajbir Singh** (supra), presumption has to be drawn in favour of the applicant.

13. In the instant case, there is no note of such disability in the service record of the applicant at the time of enrolment in service and respondents have not been able to produce any document to prove that the disease existed before his enrolment. In absence of any evidence on record to show that the petitioner was suffering from any ailment at the time of his enrollment in service, it will be presumed that he was in sound health at the time of entering service and deterioration of his health has taken place due to military service, as such, the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court.

14. In view of the above, we are of the considered view that the impugned orders passed 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 petitioner is entitled to disability pension @ 40% 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.

15. Thus in the result, the Transferred Application No. 1468 of 2010 is allowed. The impugned orders dated 14.03.2005, 29.12.2006 (communicated vide letter dated 28.03.2007) and 04.08.2008 are set aside. The respondents are directed to grant disability pension to the applicant @ 40% 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 from date of discharge 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)

Date: January 2016
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