

**RESERVED**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
COURT NO 1

**T.A. No. 1473 of 2010**  
**Tuesday, this the 17<sup>th</sup> day of Nov, 2015**

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

No. 10182434 Ex Sep Nand Lal Gupta son of Late Ram Kripal, resident of village –Jhangaha Bazar, Post office-Jhangaha, Tahsil-Chauri Chaura District Gorakhpur U.P..... **Petitioner**

Versus

1. Union of India through Dy. Director, AGPS-4 (D) Sena Bhawan Army Headquarters , New Delhi.
2. Principal CDA (P) Gp-3, Draupadighat, Allahabad
3. Commandant/Chief Records Officer, (NE Gp) Kumaon Regiment, Ranikhet- 2636845.
4. Commanding Officer, 111 Inf Bn (TA) Kumaon Allahabad

.....**Respondents**

**Ld. Counsel appeared for the Petitioner**

**- Shri Yash Pal Singh,  
Advocate**

**Ld. Counsel appeared for the Respondent**

**- Shri Devendra Kumar,  
Central Govt Standing  
Counsel**

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

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. 1473 of 2010.

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

*(i) Issue writ, order or direction in the nature of certiorari to quash the order dated 07 Nov. 2003 (Annexure No 4 to the writ petition passed by the Respondent no 2 and the Appellate order dated 17 Feb 2006, communicated to the Petitioner vide order dated 27 Sep 2006 passed by the respondents no 1 and 3 respectively (Annexure No 5 and 5 A to the writ Petition).*

*(i-a) Issue a writ, order or direction in the nature of certiorari quashing the invaliding Medical Board proceedings dated 05.05.2001 contained in Annexure No 1A to the writ Petition.*

*(ii) to issue any other and further suitable, writ order or direction which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.*

*(iii) to award the cost of the petition to the petitioner.”*

3. The Learned Counsel for the Petitioner in addition to the above reliefs, also orally prayed for the relief of condoning the delay if any, in approaching the High Court after efflux of three years, in case the Hon’ble Court converges to the view that there was any delay at all.

4. The factual matrix of the case is that the Petitioner was enrolled in the Territorial Army on 09.08.1994 and was discharged from service on 16.06.2001 with the expression “Services no longer required” under Territorial Army Act Rule 14 (b) (iii) and Para 3 (c) of AO 460/73. At the time of discharge, the Petitioner was assessed to be in low medical category and his disability was quantified at 20% for life. Before discharge, the Medical Board examined him and opined him to be afflicted with “**GENERALIZED SEIZURE (345)**” studied

with opinion that the disability of the Petitioner was neither attributable to nor aggravated by Military Service. The claim of the Petitioner for disability pension was rejected by the PCDA (P) Allahabad vide communication/order dated 15.07.2002 and 20.8.2002. The Petitioner then preferred an appeal which also culminated in being rejected vide communication/order dated 16.01.2006. It is in the above conspectus that the present T.A. was preferred in 2009 before the Hon'ble High Court at Allahabad.

5. The Learned Counsel for the Petitioner submitted that as a matter of fact, on 18.02.1999, the Petitioner fell unconscious while availing of annual leave and was immediately removed to 12, Air Force Hospital at Gorakhpur from where he was transferred to 92, Base Hospital, Central Command Lucknow on 20.02.1999 and during the course of treatment, the Petitioner was detected to be suffering from "GENERALISED SEIZURE- 345". After elapse of six months, on 13.09.1999, the Petitioner was again brought to 92, Base Hospital for up-gradation of category and the degree of his ailment was categorized from 'CEE' Temporary to Category "BEE" temporary for another six months. Again after expiry of six months, the Petitioner was admitted to 92, Base Hospital Central Command at Lucknow and this time, the Medical Board opined the Medical Category of the Petitioner as "BEE" (Permanent) and his disability was quantified at 20% for life. In view of the above, it is submitted, his disability would be deemed to be aggravated by Military Service as per Sub Rule 7 (a) to Appendix II to Rule 173 of Pension Regulations and Rules 5 (b) & 19 of the Entitlement Rules.

6. **Per contra**, the submission of Learned Counsel for the Respondents is that the Petitioner was discharged under Army Order

460 of 1973 Para 2 (c) as "service no longer required" under Territorial Army Rule 14(b) (iii) and his disability was pegged at 20% for life but his disability, at the same time, was opined as neither attributable nor aggravated by service and it being pre-requisite for consideration of disability for grant of disability pension, the claim for disability pension, it is contended, was rightly rejected. He further submitted that the Petitioner has rendered only 05 years and 312 days of embodied service in the Territorial Army. He also propped up the order of rejection of the claim for disability pension in appeal. The Learned Counsel for the Petitioner also submitted that the Petitioner is not eligible for grant of disability pension also in terms of Para 9 of Govt. of India Ministry of Defence Letter No. 1(6)/98/D (Pension/Services) dated Feb 03,1998 as he had rendered less than 10 years embodied service. He also submitted that since the Petitioner was discharged as "Services no longer required" and hence, prior to discharge, he was issued show cause notice and it is thereafter that he was discharged from service as no longer required.

7. The precise submissions as would crystallize from the above are two folds; firstly that the Petitioner was discharged as no longer required; secondly that he had rendered less than 10 years of service and lastly that the disability of the Petitioner was found not to be attributable to nor aggravated by the Military service.

8. We have heard the arguments advanced across the bar by Learned Counsel for the Parties and perused all the documents put forth before us.

9. On the count of delay, it is submitted by the Learned Counsel for the Respondents that the Petitioner was discharged from service in the month of June 2001 while he invoked the jurisdiction of Hon'ble

High Court after elapse of more than 8 years. In connection with it, the Learned Counsel for the Petitioner explained that after rejection of his appeal on 17.2.2006, he again moved application before the Ministry of Defence Army Headquarters New Delhi on 25.3.2007 and thereafter sent a reminder on 30.11.2007 embodying therein that the Petitioner was on the verge of starvation on account of being unemployed as Ex serviceman certificate had not yet been issued to him. The Petitioner waited for reply till 2009 and when it did not elicit any reply, the Petitioner was compelled to institute the writ petition in the year 2009. In **Shiv Dass vs. Union of India - 2007 (9) SCC 274**, this Court held as under:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

10. We have given out anxious consideration to the rival submissions on this count and we are of the considered view that the delay that has occurred is not deliberate and is liable to be condoned. It is accordingly condoned.

11. Before dealing with the merits of the case for disability pension, it would be appropriate to deal with the question of discharge of the Petitioner as service no longer required. Learned Counsel for the Respondents emphasized the fact that the Petitioner had not been invalidated out of service but was discharged as service no longer required. He further submitted that a show cause notice was issued and it was thereafter that the Petitioner was discharged under Territorial Army Act Rule 14 (b) (iii) and Para 3 (c) of AO 460/73.

12. Learned Counsel for the Petitioner repudiated the above submissions arguing that no show cause notice was issued before discharge. On being confronted, Learned Counsel for the Respondents reiterated the submission explaining that the copy of the show cause notice was not available as the records have already been destroyed after expiry of stipulated period of three years.

13. On the above pleadings, the following points have been framed for discussion:

(i) Is the ID 'Generalized Seizure- 345' attributable to and aggravated by military service?

(ii) Whether the opinion of Invaliding Medical Board proceedings as to attributability or aggravation of the ID and the impugned orders dated 06 February 2009 and 31 March 2013 are liable to be quashed?

(iii) What relief, if any, is the applicant entitled to?

14. It is not disputed that the applicant was enrolled in the Territorial Army on 09.08.1994 and at the time of enrolment, he was not suffering from any ailments which were noted in the medical documents. During annual leave, he fell unconscious and was removed to 12, Air Force Hospital at Gorakhpur from where he was transferred to 92, Base Hospital, Central Command Lucknow on 20.02.1999 and during the course of treatment, the Petitioner was detected to be suffering from "GENERALIZED SEIZURE -345". After six months, the Petitioner was again brought to 92 Base Hospital for up-gradation of category and the degree of his ailment was categorized from 'CEE' Temporary to Category "BEE" temporary for another six months. Again after expiry of six months, the Petitioner was admitted to 92, Base Hospital Central Command at Lucknow and this time, the Medical

Board opined the Medical Category of the Petitioner as "BEE (Permanent) and his disability was quantified at 20% for life and he was commended to be discharged as being unfit for military service.

15. The Invaliding Medical Board opined that the ailment/disability was neither attributable to nor aggravated by military service and in consequence, no disability pension was sanctioned despite his appeals to the 1<sup>st</sup> and 2<sup>nd</sup> Appellate authorities.

16. The Applicant's Counsel drew our attention that Hon'ble The Apex Court's judgments in Civil Appeal No.4949 of 2013 in the case of **Dharamvir Singh Vs. Union of India and Ors reported in (2013) 7 Supreme Court Cases 316**, and **Sukhvinder Singh Vs. Union of India and Ors** reported in **2014 STPL(Web) 468 SC** has clearly stated that when "disability is not recorded at the time of recruitment, it must be presumed to have been caused subsequently and unless proved to the contrary to be consequence of military service". The benefit of doubt should therefore go to the applicant and the Applicant should be given disability as attributable to and aggravated by military service.

17. 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.”

18. On the question whether the disability was in quiescent state at the time of enrolment and hence, could not be detected by the Medical Officer, the answer of the Board is in negative. It can, therefore, be presumed that the onset of the disease had manifested itself during the Military service.

19. In the instant case, the Medical Board has expressed its opinion that the disease is not attributable to, nor aggravated by service, but the Respondents have failed to notice that the Medical Board had not given adequate reason in support of its opinion. The bald opinion unsupported with any reasons does not commend to us for acceptance. The Pension Sanctioning Authority has passed the impugned order of rejection based on the report of the Medical Board. In view of the ratios of the decisions rendered in **Dharamvir Singh Vs. Union of India and Ors reported in (2013) 7 Supreme Court Cases 316**, and **Sukhvinder Singh Vs. Union of India and Ors reported in 2014 STPL(Web) 468 SC** in which he has clearly stated that when *"disability is not recorded at the time of recruitment, it must be presumed to have been caused subsequently and unless proved to the contrary to be consequence of military service"*



since no reasoned opinion is available on record nor is there anything on record to support the opinion that the disability was neither attributable to nor aggravated by the Military service or that the ailment of the Petitioner had its genesis prior to entry in Territorial Army, the recommendations of the Invaliding Medical Board cannot be sustained.

20. In view of the findings recorded above, we are in agreement with the contention of the Learned Counsel for the Applicant that the opinion of the Invaliding Medical Board in so far as it opined that the disability of the Petitioner was neither attributable to nor aggravated by the Military service and consequent impugned order based on the recommendations/opinion of the Invaliding Medical Board as aforesaid are unsustainable.

21. In view of the above, we are of the considered view that the impugned orders passed by the Respondents were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned order passed by the Respondents thus deserves to be set aside and the Applicant is held entitled to disability pension @20% for life from the date of discharge which would be rounded off to 50% in terms of the decision of the Apex Court in **Sukhvinder Singh** (supra) with interest at the rate of 9% per annum.

### **ORDER**

22. Thus in the result, the T.A. succeeds and is allowed. The impugned orders passed by the Respondents dated 07.11.2003 (Annexure 4 to the writ petition), and the order dated 27.09.2006 (Annexures 5 and 5 A to the writ petition) are set aside. Further the proceeding of Invaliding Medical Board dated 05.05.2001 contained

in Annexure No 1A to the writ petition is also set aside to the extent in so far as it opined that the disability of the Petitioner was neither attributable to nor aggravated by the Military service. The Petitioner is held entitled for disability pension @ 20% 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%. 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 directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

23. No order as to costs.

**(Lt Gen Gyan Bhushan)**  
**Administrative Member**

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

Date: Nov. ,2015

MH/-