

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
COURT NO 1

T.A. No. 08 of 2014
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"

Ajay Singh Rana son of Late Shri M.S.Rana, permanent resident of Village Gowalsar PS Jowar District Una Himachal Pradesh, presently resident of House No. 12 Sadar Bazar, Cantonment, Faizabad..... **Petitioner**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Addl. Director General, Personnel Services, PS 4 (d), Adjutant General's Branch, Army Headquarters, DHQ, P.O. New Delhi-11.
3. Commandant, Dogra Regimental Centre, Faizabad Cantt.
4. Records, the Dogra Regiment, Cantonment Faizabad through its officer Incharge.
5. Chief Controller of Defence Accounts (Pensions) G-3 Section, Allahabad**Respondents**

Ld. Counsel appeared for the Petitioner

**- Shri Yash Pal Singh,
Advocate**

Ld. Counsel appeared for the Respondent

**- Shri B.P.Singh,
Central Govt Standing
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, Lucknow Bench Lucknow and it has been renumbered as Transferred Application No. 8 of 2014.

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

(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned decision of the O.P. No. 5 dated 4.7.94 communicated by the O.P.No 4 vide letter dated 13.7.94 (contained in Annexure No. 9 to the writ petition) and also the impugned appellate order dated 30.4.96 passed by the O.P. No. 1 rejecting the disability pension claim of the petitioner and the appeal preferred against the said decision after summoning the original records.

(a-1) Issue an order or direction setting aside the Invaliding Medical Board proceedings (Annexure No. 6-A to the transferred Application) after summoning the original records.

(b) Issue a writ, order or direction in the nature of Mandamus commanding the O.Ps particularly the O.Ps 1 and 5 to grant the invalid/disability pension to the petitioner for disability/injury suffered by the petitioner on 21.8.92 while undergoing training at Dogra Regimental Centre Faizabad and pay the disability pension including the arrears from 2.5.93 onwards within a period of 3 months.

(c) any other writ, order or direction as this Hon’ble Court may deem fit in the circumstances of the case.

(d) allow this writ petition with cost.”

3. The facts in short are that the petitioner was enrolled in the Indian Army on 17.08.1992 and was discharged from service on

02.05.1993 under item III (iii) of the Table Annexed to Rule 13 of the Army Rules 1954 on account of disability resulting from "ACUTE SCHIZOPHRENIC EPISODE". The Medical Board assessed the disability at 40% for two years but opined that it was neither attributable nor aggravated by military service and considered it as constitutional and not related to military service. The claim for disability pension was rejected by the PCDA (P) Allahabad vide order as contained in communication dated 13.07.1994 on the ground that it was neither attributable nor aggravated by the Military service. The PCDA (P) reduced the disability as less than 20%. The appeal preferred against the decision of the PCDA was also rejected by the Govt of India Ministry of Defence vide communication dated 30.4.1996. Aggrieved by the above orders, the petitioner preferred the Writ petition in High Court Allahabad at Lucknow Bench.

4. The submissions of Learned Counsel for the Petitioner substantially are that in the course of training, he felt urge for toilet and on way from ground where he was undergoing training, to toilet, he stumbled against something like iron or stone and fell down. Thereafter, he found himself in the Military Hospital, Faizabad. He further submitted that in the teeth of the opinion of Invaliding Medical Board, which assessed the disability as 40% for two years, the PCDA (P) reduced the disability to less than 20% which it could not do in the light of various decisions of Hon'ble the Apex court including the decision rendered in the case of Ex Sapper Mohinder Singh.

5. **Per contra**, learned counsel for the respondents submitted that since the Petitioner had barely completed 4 days of basic military training in the Army and further that the disease of the

petitioner being constitutional and not related to military service was opined by the Medical Board as neither attributable to nor aggravated by the military service, he was not entitled to disability pension. He further submitted that the PCDA (P) rightly reduced the disability from 40% to less than 20% as neither attributable to nor aggravated by military service.

6. 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.

7. 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 decision 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)."

8. 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.”

9. No doubt, the service rendered by the Petitioner is very short. It has not been denied that the Petitioner 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.

10. 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 @ 40% for two years from the date of discharge.

11. Now coming to the submission that the PCDA erroneously interfered and reduced the disability from 30% to less than 20%, we feel called to refer to the ex-cathedra decision of Hon'ble The Apex Court in the case of **Ex-Sappier Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** noddod with approval in **Babu Singh Vs Union of India and others CWP No 3296 of 2003 decided on 26.4.2006**. The observation made in the decision of **Ex.Sapper Mohinder Singh (supra)** being relevant is quoted below.

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

12. In view of the above, the Pension Sanctioning Authority has erroneously passed the impugned order of rejection based on the report of the Medical Officer attached to it in the teeth of the opinion of the Medical Board.

13. In the instant case, the Petitioner was not examined by the Resurvey Medical Board for the reasons that his disability was reduced to less than 20% at the level of the PCDA (P) in the teeth of the Medical opinion. On the question of Resurvey Medical Board, we may refer to the decision 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 judgment, 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."

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20. 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 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."

14. In view of the above, we are of the considered view that the impugned orders passed by the Respondents dated 04.07.1994 as contained in communication dated 13.07.1994 (Annexure no.9 to the T.A.), and 30.04.1996 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 Petitioner is held entitled to disability pension @40% from the date of discharge for two years as recommended by the Medical Board with interest at the rate of 9% per annum. In view of the law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh (Supra)**, we are of the view that in the interest of justice, the 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.

15. Since the Petitioner has been held entitled to disability pension, referring to the oral prayer made by Learned Counsel for the Petitioner 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 40% for two years shall stand rounded off to 50% for two years.

ORDER

16. Thus in the result, the T.A. succeeds and is allowed. The impugned orders dated 04.07.1994 as contained in communication dated 13.07.1994 (Annexure no.9 to the T.A.), and 30.04.1996 passed by the Respondents are set aside. The Petitioner is held entitled for disability pension @ 40% for two years from the date of discharge. In the light of the decision of Hon'ble The Apex Court in **Sukhvinder Singh** (supra) and **Union of India vs Ram Avtar (supra)**, the disability pension would stand rounded off to 50% for two years. 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. In view of the law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh (Supra)**, the Petitioner shall 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. 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.

17. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Date: February, 2016

MH/-

