Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 290 of 2011

Tuesday this the 13th day of October, 2015

Hon'ble Mr. Justice V.K. DIXIT, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex. Sub. Vinod, aged about 49 years,
son of Late Ram Baran, Resident of village Kewatalia,
Post Rajganj Bazar, District Gorakhpur.

…….. Applicant

By Legal Practitioner Shri K.K. Mishra, Advocate

Versus

1. Union of India, through its Secretary,
   Ministry of Defence, New Delhi.
2. The Chief Army Staff,
   South Block, New Delhi.
3. Officer Incharge, Records, Electrical and
   Mechanical Engineer (EME) Secunderabad.
4. C.D.A. (Pension) Allahabad.

…… Respondents

By Legal Practitioner Shri D.K. Pandey, Learned Counsel for the Central Government

ORDER

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

> *"(i). Quash letter no.JC-754355L/DP-1/PEN dated 16th Oct. 2008 issued by EME Records marked as* ***Annexure No.A-2.***
>
> *(ii) Quash Army Headquarters AGs Branch letter No.B/40502/381/09AG/PS-4(IMP-2 dated 31st Dec. 2009* ***Annexure No.A-8.***
>
> *(iii) Quash letter No.1 (127)/2010/D (Pen/Appeal) dated 23 Nov. 2010 of Government of India Ministry of defence, Sena Bhawan, New Delhi marked as* ***Annexure No.A-12.***
>
> *(iv) issue order/direction to the Respondents to grant 60% disability pension to the applicant.*
>
> *(v) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
>
> *(vi) Cost of the application be awarded to the applicant."*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 17.12.1980 and was discharged from service with effect from 30.09.2008 (afternoon)" being placed in low medical category "P2

(Permanent)" due to his disease "(i) **Primary Hypertension** (30% disability for life) and (ii) **CAD STE AWMI (SVD- LAD-DES)** (30% disability for life)". The medical board held prior to his discharge assessed the composite disability at 60% for life and considered it neither attributable to nor aggravated by military service, as the disease in question were constitutional. The claim for disability pension of the applicant was rejected, because the disability was considered neither attributable to nor aggravated by military service. Subsequently, the applicant's first and second appeals against the rejection of claim for disability pension were also rejected. Aggrieved, the applicant has filed the instant Original Application.

3. Heard Shri K.K. Mishra, Learned Counsel for the applicant, Shri D.K. Pandey, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant has submitted that at the time of recruitment, the applicant was medically examined by a board of medical officers and thereafter, he was allowed to join the training. After 09 months of the training, he was posted to various units of the army and he kept on working there for long 20 years without any medical problem. It was in the year 2009, when the

applicant was posted with Light Repair Workshop of 73 Armoured Workshop located at Bikaner, that hypertension was detected for the first time. By this time, the applicant had rendered 20 years of service without any medical problem. He further submitted that functioning in the Armoured Workshop is very strenuous and tense. The nature of work and surrounding conditions as well as climate conditions are the basic cause for developing hypertension, as such it cannot be solely constitutional disease, which developed after 20 years of service. He further submitted that since at the time of enrollment, the applicant was in fit medical condition, as such the disease should be considered as attributable to and aggravated by military service and disability pension should be granted to the applicant. The applicant's Counsel also submitted orally, though not contained in the pleadings, that as per Government Order dated 31.01.2001 the disability pension be rounded off to 75%.

5. Per contra, the learned counsel for the respondents submitted that the medical board had assessed the composite disability as 60% and it was considered neither attributable to nor aggravated by military service, as such the applicant 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). His claim for disability was rejected. First and second appeals of the applicant were also rejected, therefore, the applicant is not entitled for grant of disability pension.

6. Learned Counsel for the respondents further submitted that the applicant's claim for disability pension had been rejected, because the disability was considered neither attributable to nor aggravated by service.

7. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. 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."

8. In the case of **Dharmvir Singh Vs. Union of India & others (supra)** 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 Pension), 2002 -"Entitlement : General Principles", including paragraphs 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."

9. In **Sukhvinder Singh Vs. Union of India (supra),** 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……."*

10. On the question whether the disability is attributable to or aggravated by military service, we feel called to refer to the decision of Hon'ble The Apex Court **in Union of India vs. Rajbir Singh, Civil Appeal No.2904 of 2011 decided on 13.02.2015,** wherein 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 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."

11. In **Union of India and Ors v 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."*

12. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded in approval attended 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. When the peremptory direction of Hon'ble The Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was invalided out of service on account of his 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, would also be entitled to the benefit of rounding off.

13. Having given considerations to the rival submissions made on behalf of the parties' Learned Counsel, we find that the applicant had been enrolled in the Indian Army in a fit medical condition and he suffered the disability during his service , and therefore, 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 vs. Rajbir Singh** (supra), a presumption has to be drawn in favour of the applicant. Since the applicant suffered the disease due to service conditions, it is for the respondents to rebut the claim of the applicant. It is also made clear in the judgments of Hon'ble The Apex Court (supra) that the applicant cannot be called upon to prove his claim for the disability pension once he was enrolled in fit medical conditions and was discharged in low medical category.

14. In this case, no reasoned opinion has been given by the medical board, on the basis of which the medical board concluded that the applicant's disease is neither attributable to nor aggravated by the service conditions. There is no note of such disease or disability in the service record of the applicant at the time of acceptance in service. In fact, medical board in the column 'Did the disability exist before

entering service" has mentioned 'NO'. In absence of any evidence on record to show that the applicant was suffering from any ailment at the time of his acceptance in service, it will be presumed that he was in sound physical and mental condition at the time of entering service and deterioration of his health has taken place due to service. Therefore, the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court.

15. In the above conspectus, 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 orders passed by the respondents deserve to be set aside and the applicant is entitled to disability pension @60% for life as recommended by the medical board from the date of discharge along with interest at the rate of 9% per annum on the arrears of disability pension.

16. In the result, O.A. No. 290 of 2011 is allowed. The impugned orders dated 23.11.2010, 31.12.2009 and 16.10.2008 are set aside. The applicant is entitled to grant of disability pension @ 60% for life. The respondents are directed to grant disability pension to the applicant @ 60% from the date of discharge and pay arrears of disability

pension with interest @ 9% per annum from the date of discharge till the date of actual payment. In case the applicant represents, the respondents shall also grant the benefit of rounding off of disability pension @ 75% as per policy and in the light of the order passed by Hon'ble The Apex Court in the case of **Union of India vs. Ram Avtar (supra)**. Respondents are 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)

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Dated : Oct. 2015