Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 198 of 2014

Tuesday this the 15th day of September, 2015

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

Paras Nath Tiwari (No 14552268L Ex-Hav)
S/o Shri R K Tiwari
R/o House No 40, Sadanand Nagar Ahirwa,
Post – Harjinder Nagar,
Distt – Kanpur – 208007 (UP)

…….. Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, Through the Secretary,
   Ministry of Defence, Government of India,
   NEW DELHI.

2. The Chief of Army Staff,
   Army Headquarters,
   DHQ Post Office,
   NEW DELHI.

3. The Officer-In-Charge,
   EME Records
   Secunderabad-500021

4. The Medical Board,
   Military Hospital Bareilly (UP)
   Through its President.

5. The Chief Controller,
   Defence Accounts (Pension),
   Draupadi Ghat,
   ALLAHABAD (U.P.).

……… Respondents

By Legal Practitioner Shri D.S. Tiwari, 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). The Hon'ble Tribunal may be pleased to summon the Release Medical Board dated 31.10.2006 by which applicant was discharged and be quashed.*
>
> *(II) The Hon'ble Tribunal may be pleased to set aside the orders dated 29.06.2007 & 03.12.2010 (Annexure-A/1 & Annexure A/2) issued by Respondents.*
>
> *(III) The Hon'ble Tribunal may kindly be pleased to declare that the disease for which the applicant was discharged from service was attributable to military service and the percentage of the disability was 20% or more. Thereafter, direct the respondents to grant disability pension to the applicant w.e.f. 01.04.2007 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
>
> *(IV) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation."*

2. The admitted and undisputed facts of the case are that the applicant was enrolled in the Indian Army on 02.03.1983 and was discharged from service on completion of his term of engagement on 01.04.2007 in medical category S2(Permanent) due to "Unspecified Non Organic Psychosis". His disability was assessed as less than 20% (15-19%) for life. His claim for disability pension was rejected vide order dated 29.06.2007, because the disability was considered neither attributable to nor aggravated by military service. The applicant submitted a representation to Dir PS-4, AG's Branch Army HQs DHQ P.O. New Delhi in November, 2010 seeking permission to make an appeal against the order vide which his claim for disability pension was rejected. However, appeal was not entertained by the respondents, because it was filed after a lapse of about 03 years and 06 months. Aggrieved, the applicant has filed the instant O.A.

3. Heard Shri R. Chandra, Learned Counsel for the applicant, Shri D.S. Tiwari, 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 and no such disease or disability was noticed by

the medical authorities. He was discharged from service after completing about 26 years of service in medical category S2 (Permanent) with less than 20% disability for life. Learned Counsel for the applicant has submitted that as per judgment of Hon'ble Apex Court in the case of **Sukhvinder Singh Vs. Union of India** reported in (2014) STPL (WEF) 468 SC even if the disability is assessed below 20%, the disability pension is to be granted and should be rounded off to 50%. Since there is no note of such disease or disability in the service record at the time when he entered the service, it has to be considered that the disability was attributable to and aggravated by the service conditions. The applicant's Counsel placed reliance on the judgment of Hon'ble the Apex Court in the case of Dharamvir Singh reported in (2013) 7 SCC 316, and the subsequent judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh Vs. Union of India** reported in (2014) STPL (WEF) 468 SC. Lastly, the learned counsel for the applicant also made an oral submission, though not contained in the pleadings, that as per Government Order dated 31.01.2001 the disability pension be rounded off to 50%.

5. Per contra, the learned counsel for the respondents submitted that the medical board had assessed the disability as less than 20% (15-19%) 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 with an advice to prefer appeal to the Appellate Committee on First Appeal within six months, if he so desired, but the applicant failed to prefer any appeal within the stipulated time. It was, therefore, presumed that he was satisfied with the decision of the competent authority. Subsequently, the applicant submitted a petition dated 22.09.2010 directly to the Integrated Headquarter, Ministry of Defence (Army) AG/PS-4 for conducting Review Survey Medical Board (RSMB). However, since the applicant was not entitled for grant of disability pension, there was no question of holding RSMB, as such the applicant was suitably replied by EME Records vide their letter dated 03.12.2010.

6. Learned Counsel for the respondents further submitted that the applicant's claim for disability pension had been rejected, because the disability was less than 20%

and it 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), Chapter IV of Entitlement Rules 1982 and the provisions of Rules 5, 9, 14(b) and 20 of the Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

(a) **<u>Pension Regulations for the Army 1961 (Part I)</u>**

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) **<u>Chapter IV – Entitlement Rules</u>**

Entitlement Rules for Casualty Pensionary Awards, 1982

Rule 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.

(c) **Entitlement Rules for Casualty Pension Award, 1982**

"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.

a. The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.

Disease

14. In respect of diseases, the following rule will be observed:-

(a) cases…….

(b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

x x x x x x x x

20. 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)."
xxx xxx xxx

"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"*

xxx xxx xxx

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. 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.*
>
> *Xxx xxx xxx*
>
> *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 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.

12. 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 case of **Dharmvir Singh Vs. Union of India & others** (supra) and the subsequent judgment of the Hon'ble The Apex Court in the case of **Sukhvinder Singh Vs. Union of India** (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. Dwelling on disability less than 20%, Hon'ble The Apex Court in the case of **Sukhvinder Singh Vs. Union of India (supra)** in Para 9 of the judgment held that "whenever 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". All issues have now been settled, which are applicable or may be raised by the respondents in this case, by the judgments of the Hon'ble The Apex Court referred to above.

13. 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. Mere conclusion without reasons is not a valid medical opinion. There is no note of such disease or disability in the service record of the applicant at the time of acceptance in service. 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 and the disability has to be considered 20% and above. Therefore, the medical opinion cannot be accepted and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court.

14. In view of the facts, circumstances and case laws discussed above, we are of the considered view that the applicant is entitled to grant of disability pension @ 20% for life. The O.A. No. 198 of 2014 is allowed. The impugned orders dated 29.06.2007 and 03.12.2010 (Annexures A/2 and A/3) are set aside. The respondents are directed to grant disability pension to the applicant @ 20% 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 consider for rounding off of disability pension @ 50% 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). 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.

15. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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