

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 224 of 2014

Friday this the 4th day of September, 2015

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

Soam Nath, (Ex No 760836 Sergeant)
S/o Shri Ram Ajore,
R/o Village & Post- Belahra,
District – Basti -272182,
State – Uttar Pradesh

..... 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 the Air Staff,
Air Force Bhawan
NEW DELHI.
3. The Officer-In-Charge,
Air Force Record Office
PIN-938406
Subroto Park
NEW DELHI-110010
4. The Chief Controller,
Defence Accounts (Pension),
Draupadi Ghat,
ALLAHABAD (U.P.).

..... Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, Learned
Senior Standing 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 quash the order dated 30.12.2011 (Annexure No A-1), order dated 31.12.2012 (Annexure No A-2) and order dated 22.05.2014 (Annexure-A-3) issued by Respondents.

(II) The Hon’ble Tribunal may be pleased to summon the Release Medical Board Proceedings if the disability of the applicant is assessed as neither attributable to nor aggravated by military service and pleased to quash the same.

(III) The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant disability pension to the applicant w.e.f. 01.02.2012 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 factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 10.01.1992. While

posted in Gorakhpur with 16 Sqn AF, the applicant was diagnosed to be suffering from “CORONARY ARTERY DISEASE (SVD) POST PTCA” and he was placed in low medical category A4P3 (Permanent). On completion of 20 years, he was discharged from service in category A4P3 (Permanent) on 31.01.2012. Before his discharge, Release Medical Board was held and disability was assessed at 30% for life, but it was considered neither attributable to nor aggravated by service. Grant of disability pension was denied by the Competent Authority vide order dated 30.12.2011 (Annexure A-1 to the O.A.). The first and second appeals of the applicant against the basic order were rejected vide orders dated 31.08.2012 and 22.05.2014 (Annexures A-2 & A-3 to the O.A.), respectively.

3. The respondents have filed counter affidavit and therein details regarding disease and its examination at different places have been mentioned. They have admitted that the applicant was suffering from disease “CORONARY ARTERY DISEASE (SVD) POST PTCA” and Release Medical Board has assessed the disability as 30% for life. However, they have emphasized that as the disease was neither attributable to nor aggravated by

service, hence disability pension was rightly refused to the applicant.

4. Heard Shri R. Chandra, Learned Counsel for the Applicant, Mrs. Deepti Prasad Bajpai, Learned Senior Standing Counsel for the respondents and perused the record.

5. Learned Counsel for the applicant has submitted that the impugned orders are wholly illegal, arbitrary and contrary to the findings of the Release Medical Board. Since the disease was found to be contracted in service; meaning thereby, it was attributable to and aggravated by the service. As such, the applicant is entitled the disability pension as well as arrears thereof together with interest at the rate of 18% per annum. Lastly, he 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%.

6. Contra to the above submissions, Learned Senior Standing Counsel appearing for the Respondents has submitted that since the disease suffered by the applicant has been found to be neither attributable to nor aggravated by service, he is not entitled to disability pension and it has been rightly denied to him by the Competent Authority and affirmed by the First and Second Appellate Authorities.

7. In the case of **Dharmvir Singh Vs. Union of India & others** reported in (2013) 7 SCC 316, the observations made by the Hon'ble Apex Court are 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.”

8. In **Sukhvinder Singh Vs. Union of India** reported in (2014) STPL (WEF) 468 SC, observation made by the Hon’ble Apex Court are 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.....”.

9. The Hon’ble Apex Court in **civil appeal No.418 of 2012, Union of India and others vs. Ram Avtar** along with large number other appeals, through its judgment dated 10.12.2014, has observed as under:

“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.

5. *xxxx xxxx 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 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."*

10. Having given anxious considerations to the rival submissions made on behalf of the parties' Learned Counsel, it is observed that at the time of enrolment, the applicant was in sound, physical and mental condition and was medically fit when he joined the Indian Air Force. There is no note of any disability or disease at the time of acceptance in service. It is, therefore, assumed that he had got this disability during his service period. Therefore, in

view of the judgment of the Hon'ble Apex Court in the case of **Dharmvir Singh Vs. Union of India & others** (supra) and the subsequent judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh Vs. Union of India** (supra), a presumption has to be drawn in favour of the applicant, who is discharged in low medical category. Since the applicant developed the disease due to his Air Force Service conditions and it is for the respondents to rebut the claim of the applicant. It is also made clear in the judgments of Hon'ble Apex Court (supra) that the applicant cannot be called upon to prove his claim for the disability pension once he was enrolled in service in fit medical conditions and was discharged in low medical category. All issues have now been settled, which are applicable or may be raised by the respondents in this case, by the Hon'ble Supreme Court referred to above.

11. In the instant case, no reasoned opinion has been given by the Release Medical Board, on the basis of which the Release Medical Board concluded that the applicant's disease is neither attributable to nor aggravated by the Air Force 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 Air Force Service. In absence of any evidence on record to show that the applicant was suffering from “CORONARY ARTERY DISEASE (SVD) POST PTCA” 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 medical opinion cannot be accepted and the applicant is entitled to disability pension. The applicant is also entitled to the benefit of rounding off of disability pension as per policy and in the light of the decision of the Hon’ble Apex Court delivered in **Civil Appeal No. 418/2012 Union of India Vs Ram Avtar** decided by the Hon’ble Supreme Court on 10.12.2014.

12. In view of the facts, circumstances and case laws discussed, we are of the considered view that the impugned order rejecting the claim of disability pension is unjust and improper. The applicant is entitled for grant of disability pension @ 30% for life. Thus, the O.A. No.224 of 2014 is allowed and the impugned orders contained in Annexure Nos. A-1, A-2 and A-3 of the O.A. are quashed. The respondents are directed to grant disability pension to the applicant @ 30% for life from the date of discharge. The

applicant is also entitled to interest @ 8 % 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 law laid down by Hon'ble 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.

13. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)
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(Justice V.K. DIXIT)
Member (J)