

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 44 of 2016

Friday this the 13th day of May, 2016

Hon'ble Mr. Justice Abdul Mateen, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. 2672360-W Hav/Clk Krishna Chandra Singh (Retd),
Aged about 57 years, S/o Shri Shobha Singh
R/o Village: Jamu, Post : Jamu, Tehsil : Kanpur Nagar,
Dist : Kanpur Nagar (UP) 209214

..... Applicant

By Legal Practitioner Shri Shailendra Kumar Singh, Advocate

Versus

1. Union of India through Defence Secretary, Ministry of Defence, South Block, New Delhi-110106.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi – 110011
3. Additional Directorate General Personnel Services, Adjutant General Branch, Integrated HQ of Min of Def (Army), Room No. 11, Plot No.-108(West), Brassey Avenue, Church Road, New Delhi-110001
4. OIC Records, The GRENADIERS Records, PIN – 908776 C/O 56 APO.
5. PCDA (P), Drapadhighat, Allahabad (UP) – 211014

..... Respondents

By Legal Practitioner Shri Ashish Kumar Singh, Learned Counsel for the Central Government

JUDGMENT

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:-

- “(a) to quash or set aside the Respondent No. 3 letter dated 10 Apr 2015 (Impugned Order and Annexure A-1 to this Original Application).*
- (b) to issue necessary direction/orders to the respondents to grant disability pension to the applicant from the date of discharge i.e., 01.12.2001 with arrears and suitable rate of interest with all other consequential benefits thereof.*
- (c) to grant benefit of rounding off of the disability pension at the rate of 50% from the date of discharge i.e, 01.12.2001 and to pay arrears thereof in terms of Govt of India letter issued in pursuance of recommendations of VI CPC.*
- (d) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the humble applicant.*
- (e) Cost of the application may be awarded to the applicant.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 19.12.1973 and was discharged from service under Army Rule 13 (3) III (v) on 30.11.2001 in low medical category due to **“Primary Hypertension 401”**. The medical board held prior to his discharge assessed his disability 30% for two years and considered it as aggravated by military service. The claim

for disability pension was rejected by the PCDA (Pension), Allahabad vide order dated 16.05.2002. Subsequently, his first appeal was rejected vide order dated 16.10.2003. The applicant preferred his second appeal, though this appeal was time barred, the DGAFMS accorded sanction for holding second appeal medical board of the applicant, which was held on 28.10.2013 in Base Hospital, Delhi and the competent medical authority considered the disability of the applicant as aggravated by military service and assessed the same as 40% for life. The appellate committee on pension rejected the second appeal vide order dated 10.04.2015. Aggrieved the applicant has filed the instant Original Application with the prayer as quoted above.

3. Heard Shri Shailendra Kumar Singh, learned counsel for the applicant, Shri Ashish Kumar Singh, learned counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled in the Indian Army after thorough medical examination and he was found absolutely fit in all aspects. The disease occurred to the applicant because of stress and strain of military service, while he was performing his duties. Learned Counsel for the applicant submitted that though the medical board held at the time of discharge considered the disability as aggravated by military service, but the claim for disability pension was rejected by the PCDA (P), Allahabad, which was not correct and the applicant should be granted disability pension. He further submitted that even the appeal medical board held in October 2013 considered the disability to be aggravated by military service and assessed the same as 40% for life but he was not granted disability pension. He

further submitted that in view of Para 173 of the Pension Regulations and various decisions of The Hon'ble Supreme Court as well as various Benches of the Armed Forces Tribunal on the subject of disability, the applicant is entitled to be granted the disability pension at the rate of 40% for life and the benefit of rounding off of the same to the extent of 50% as per Government Order dated 31.01.2001.

5. **Per contra**, learned counsel for the respondents submitted that the disease “**Primary Hypertension 401**” being suffered by applicant was a constitutional disorder and though it was considered aggravated by military service, the PCDA (P), Allahabad rejected the claim for disability pension. Even the second appeal medical board assessed the disability of the applicant as 40% for life and considered it aggravated by military service, however, the appellate authority has rejected the applicant's second appeal. The applicant cannot claim disability pension as a matter of right, and his claim for grant of disability pension has been rightly rejected.

6. The Relevant portions of the Pension Regulations for the Army 1961 (Part I) and 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 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.

- 9. *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.*

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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.”

7. We would like to refer to 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 and has clearly postulated that when there is no note of disease or disability available in the service record of the petitioner at the time of acceptance for Army service, it would be presumed that the petitioner was in sound physical and mental condition at the time of entering the service and deterioration in his health had taken place due to service. The relevant portion of the judgment is excerpted below:

“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. On similar issue of grant of disability pension, in **Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC, Hon’ble The 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.....”.

9. In the instant case, the medical board at the time of discharge had assessed the disability as 30% for two years and considered it aggravated by military service, but the claim for disability pension had been rejected by the PCDA (P), Allahabad. The second appeal medical board had assessed the disability of the applicant as 40% for life and considered it as aggravated by military service, but his second appeal was also rejected and disability pension has not been granted.

10. We feel to recall the decision of Hon’ble The Apex Court in **Ex. Sapper Mohinder Singh vs Union of India in Civil Appeal No 104 of 1993 decided on 14.01.1993** nodded with approval in **Babu Singh Vs Union of India and others CWP No 3296 of 2003 decided on 26.4.2006**, wherein the Hon’ble Apex Court has observed that the accounts branch dealing with pension matters cannot sit in appeal over the opinion of the medical board, which is an expert body in the medical line without making any reference to appellate or higher medical board. 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.”

11. We find that the medical board held at the time of discharge as also the second appeal medical board held in October 2013 has considered the disability as aggravated by military service, but on both occasions his claim for disability pension has been rejected. **As per Para 173 of Pension Regulations for the Army, 1961 (Part-I), the disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service,** as such the applicant is entitled to grant of disability pension. Non-grant of disability pension is also in contravention to the directions given in the case of **Ex. Sapper Mohinder Singh** (supra). We also find that 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 their opinion in the column 2 '**Did the disability exist before entering service**' has mentioned '**NO**'. Since the applicant had been enrolled in the Indian Army in a fit medical condition and he suffered the disability during his service period therefore, in view of the judgment of the Hon'ble The Apex Court in the case of **Dharmvir Singh** (supra) and the subsequent judgment of the Hon'ble The Apex Court in the case of **Sukhvinder Singh** (supra), a presumption has to be drawn in favour of the applicant and we converge to the view that the applicant is entitled to disability pension.

12. Coming to the prayer for rounding off, we feel to recall the decision of Hon'ble The Apex Court in **Union of India and Ors vs Ram Avtar & ors (Civil Appeal No 418 of 2012 dated 10 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 personnel who have been discharged from service on account of being in low medical category on completion of his tenure of engagement, if found to be suffering from some disability. Keeping in view this direction of Hon'ble The Apex Court in this case as well as in the case of **Sukhvinder Singh** (supra), we conclude that the applicant is entitled to the benefit of rounding off.

13. 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 @ 30% for two years from the date of discharge and he is also entitled to grant of disability pension @ 40% for life from the date of appeal medical board was held. Both of these need to be rounded off to 50%, as held in the case of **Sukhvinder Singh** (supra) and **Ram Avtar** (supra).

14. The Original Application No. **44 of 2016** is allowed. The impugned order dated 10.04.2015 (Annexure A-1 to the O.A.) is hereby set aside and the respondents are directed to grant disability pension to the applicant @ 30% for two years from the date of discharge and @ 40% for life from the date second appeal medical board was held, and both would stand rounded off to 50% in terms of the decision of Hon'ble The Apex Court in the case of **Sukhvinder Singh** (supra) and **Ram Avtar** (supra). The respondents are also directed to pay arrears of disability pension with interest @ 9% per annum from the due date till the date of actual payment. The respondents are directed to give effect to the order within four 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 Abdul Mateen)
Member (J)

Dated : May, 2016
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