

Court No.1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 239 of 2015 (Navy)

Friday, the 30th day of September, 2016

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

Ex- CK(S)-I No. 152599-T Santosh Kumar Tiwari, son of Krishna Prasad, resident of village New Bazar, Post Mirpur via Sohawal, District Faizabad (UP)

..... Applicant

By Legal Practitioner Shri S.K.Singh, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Naval Staff, Integrated Headquarter, Ministry of Defence, New Delhi-110011.
3. PCDA (Pension), Allahabad.
4. Staff Officer, Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai-400088

..... Respondents

By Legal Practitioner Dr. Shailendra Sharma Atal, 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:-

- “(I) Direct the opposite parties to quash the order dated 31.03.1998 passed by the OP No. 4 and annexed as Annexure No. 1 and appellate order which was the appeal of the petitioner was rejected vide MoD (N) letter 7(69)/2000/D (Pen A & AC) dated 21.07.2000, after summoning the same from the concerned opposite party.*
- (II) Direct the opposite parties to pay the disability pension to the petitioner accordance with law from the date of discharge i.e. 12.08.1996.*
- (III) Direct the opposite parties to pay the arrear of disability pension with the interest of 12% per annum to the petitioner accordance with law from the date of discharge i.e. 12.08.1996 till the actual realization of the aforesaid amount.*
- (IV) Pass any order which the Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.*
- (V) Allow the Original Application with cost.”*

2. Uncontested factual details of the case are that the applicant was enrolled in the Indian Navy on 10.01.1991 and was invalided out of naval service on 12.08.1996. The Medical Board considered his disability due to **Seizure Disorder (Ideopathic Epilepsy) ICD 345, V67** as neither attributable to nor aggravated by naval service and assessed it as 40% for two years. The disability pension claim of the applicant was rejected vide order dated 23.03.1998 and

subsequently his appeal too was rejected vide order dated 21.07.2000. Aggrieved he has filed this O.A.

3. Delay in filing the Original Application has been condoned.

4. Heard Shri S.K. Singh, Learned Counsel for the applicant, Dr. Shailendra Sharma Atal, Learned Counsel for the respondents and perused the record.

5. Learned counsel for the applicant submitted that when the applicant joined the Indian Navy, he was physically and mentally fit and he developed the disease due to stress and strain of service. Learned counsel for the applicant submitted that the case of the applicant is covered by the judgment of Hon'ble the Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors, reported in (2013) 7 Supreme Court Cases 316. He further submitted that in identical cases, the Armed Forces Tribunals have also rendered similar judgments and granted reliefs to the applicants.

6. **Per contra**, Learned Counsel for the respondents submitted that the disease of the applicant has been considered as neither attributable to nor aggravated by naval service, as such, as per Para 101 of Navy Pension Regulations 1964, he is not entitled to disability pension;

therefore, his claim for disability pension has rightly been rejected as per Policy.

7. We have perused the documents and record and have also examined the relevant rules and regulations on the subject.

8. We would like to refer to the decision 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 to sum up the legal position emerging from the same 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).

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.

XXX

XXX

XXX

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. We would like to recall the judgment in the case of **Sukhvinder Singh Vs. Union of India**, reported in (2014) **STPL (WEB) 468 SC**, wherein 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.....”

10. Since the Medical Board has considered the disability as 40% for two years only, we recall the observations made by Hon’ble the Apex Court in the case of **Veer Pal Singh vs. Ministry of Defence**, reported in (2013) **8 SCC 83**, which 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 Dr 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.”

11. Having given considerations to the rival submissions made on behalf of the parties' Learned Counsel, we find that the applicant was medically fit when he had been enrolled and he suffered the disability during his service. Since there is no evidence on record to show that the applicant was suffering from any disease at the time of his enrollment in service, it will be presumed that he was in good health at the time of entering service and disability has occurred due to naval service. Therefore, in view of the judgment and order of the Hon'ble Apex Court in the cases of **Dharamvir Singh** and **Sukhvinder Singh** (supra), the applicant is entitled to grant of disability pension. As such, we are of the considered view that the impugned order deserves to be set aside and the applicant is entitled to disability pension @30% for 02 years along with interest @ 9% per annum from three years prior to the date of filing the Original Application. We are also of the view that in terms of **Veer Pal Singh's** case (supra), the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the for further entitlement of disability pension, if any.

12. Learned Counsel for the applicant has not pleaded in the petition for the benefit of rounding off of disability pension but has made oral prayer only. We feel that the matter with respect to rounding off should also be dealt with to do complete justice, as such in the interest of justice, in view of the law laid down by Hon'ble The Apex Court, we propose to decide this issue also. In consonance with the Policy Letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and decision of Hon'ble the Apex Court in the case of **Union of India and others vs. Ram Avtar & others, Civil Appeal No. 418 of 2012 dated 10 December, 2014**, we are of the view that the applicant is entitled to the benefit of rounding off.

13. On the issue of delay and payment of arrears, we recall the case of **Shiv Dass Vs Union of India reported in 2007 (3) SLR page 445** wherein in Para 9 of the judgment, Hon'ble The Apex Court has observed:

“In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the pension. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for

interference, it would have dismissed the writ petition on that score alone.”

14. In view of the above, we are of the considered view that the impugned order passed by the competent authority is unjust, illegal and not in conformity with rules, regulations and law and the same deserves to be set aside and the applicant is entitled to disability pension @20% for five years in terms of the decisions of Hon’ble The Apex Court in the cases of **Dharamvir Singh** and **Sukhvinder Singh** (supra), which needs to be rounded off to 50% in terms of the decision of Hon’ble The Apex Court in the case of **Ram Avtar** (supra). We are of the opinion that the applicant also deserves to be paid the arrears of disability pension with interest @ 9% per annum from three years prior to filing of petition i.e. 28.05.2014 till the date of actual payment in view of the decision of Hon’ble the Apex Court in the case of **Shiv Dass** (supra). We are also of the view that in terms of **Veer Pal Singh’s** case (supra) the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

15. Thus, in the result, **O.A. No. 239 of 2015** succeeds and is allowed. Impugned orders dated 31.03.1998 and 21.07.2000 are hereby set aside. The respondents are directed

to grant disability pension to the applicant @ 20% for five years in terms of the decisions of Hon'ble the Apex Court in the cases of **Dharamvir Singh** and **Sukhvinder Singh** (supra), which would stand rounded off to 50% in terms of the decision of Hon'ble the Apex Court in the case **Ram Avtar** (supra). The respondents are also directed to pay arrears of disability pension with interest @ 9% per annum from three years prior to the date of filing of this petition i.e. 28.05.2014 till the date of actual payment. The respondents are further directed to refer the applicant's case to Review Medical Board, in terms of the decision in the case of **Veer Pal Singh** (supra), for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

16. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

Sep 2016

(Justice Abdul Mateen)
Member (J)

Sep 2016

LN/