ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
CIRCUIT BENCH, NAINITAL

T.A. No. 01 of 2011

Wednesday, this the 7th day of September, 2016

"Hon'ble Mr Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

Smt. Bimla Devi wife of Ex No 4068115L Rfn Digambar Singh resident of village Ranou P.O. Ranou (Gauchar) District Chamoli.

.....Petitioner

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.

2. The Chief Controller (Defence Accounts) Pension, Allahabad (U.P).

3. Chief of Army Staff H.Q Sena Bhawan New Delhi.
4. The Garhwal Rifles Regiment Centre Landsdowne (Uttranchal) through its Record Officer.

....**Respondents**

Ld. Counsel appeared for the Petitioner -Shri M.S.Chauhan, Advocate

Ld. Counsel appeared for the Respondent –Shri R.C.Shukla, Central Government Counsel

Order (Oral)

1. Initially, the petitioner had filed writ petition No.300 of 2004 before the Hon'ble High Court of Judicature at Allahabad, which after constitution of the Armed Forces Tribunal has been transferred to this Bench of the Tribunal and registered as T.A. No. 1 of 2011

2. The factual matrix of the case is that the petitioner's husband Rifleman Digambar Singh was enrolled in the Indian Army on 12.11.1984. Later-on, he was discharged from the Army on 03.01.1989, regard being had to the medical opinion that the deceased was suffering from the disease "Schizophrenic psychosis", which was a constitutional disease and hence, the same was neither attributable to nor aggravated by the military service. The representation dated 03.07.1989 submitted by the Petitioner (wife of the deceased) was rejected on the ground that she was not entitled for payment of disability pension.

3. It brooks no dispute that the deceased was found to be suffering from Schizophrenic psychosis. In the case of **Veer Pal Singh vs Secretary, Ministry Of Defence, (2013) 7 SCC 316**, Hon'ble Apex Court has dealt with dictionary meaning of the disease 'Schizophrenic psychosis' which is reproduced below.

> *"13. 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.*

14. 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." Some of the symptoms of schizophrenia are:

Positive symptoms Positive symptoms are psychotic behaviors not seen in healthy people. People with positive symptoms often "lose touch" with reality. These symptoms can come and go. Sometimes they are severe and at other times hardly noticeable, depending on whether the individual is receiving treatment. They include the following:

Hallucinations – "Voices" are the most common type of hallucination in schizophrenia. Hallucinations include seeing people or objects that are not there, smelling odors that no one else detects, and feeling things like invisible fingers touching their bodies when no one is near.

Delusions - The person believes delusions even after other people prove that the beliefs are not true or logical. They may also believe that people on television are directing special messages to them, or that radio stations are broadcasting their thoughts aloud to others. Sometimes they believe they are someone else, such as a famous historical figure. They may have paranoid delusions and believe that others are trying to harm them.

Thought disorders - are unusual or dysfunctional ways of thinking. One form of thought disorder is called "disorganized thinking". This is when a person has trouble organizing his or her thoughts or connecting them logically, a person with a thought disorder might make up meaningless words, or "neologisms".

Movement disorders - may appear as agitated body movements. A person with a movement disorder may repeat certain motions over and over. In the other extreme, a person may become catatonic. Catatonia is a state in which a person does not move and does not respond to others. Catatonia is rare today, but it was more common when treatment for schizophrenia was not available.

Negative symptoms Negative symptoms are associated with disruptions to normal emotions and behaviors. These symptoms are harder to recognize as part of the disorder and can be mistaken for depression or other conditions. These symptoms include the following:

• "Flat affect" (a person's face does not move or he or she talks in a dull or monotonous voice) • Lack of pleasure in everyday life • Lack of ability to begin and sustain planned activities • Speaking little, even when forced to interact.

15. In Modi's Medical Jurisprudence and Toxicology (24th Edn. 2011) the following varieties of Schizophrenia have been noticed:

Simple Schizophrenia – the illness begins in early adolescence. There is a gradual loss of interest in the outside world, from which the person withdraws. There is an all round impairment of mental faculties and he emotionally becomes flat and apathetic. He loses interest in his best friends who are few in number and gives up his hobbies. He has conflicts about sex, particularly masturbation. He loses all ambition and drifts along in life, swelling the rank of chronically unemployed. Complete disintegration of personality does not occur, but when it does, it occurs after a number of years.

Hebephrenia- hebephrenia occurs at an earlier age than either the katatonic or the paranoid variety. Disordered thinking is the outstanding characteristic of this kind of schizophrenia. There is great incoherence of thought, periods of wild excitement occur and there are illusions and hallucinations. Delusions which are bizarre in nature, are frequently present. Often, there is impulsive and senseless conduct as though in response to their hallucination or delusions. Ultimately the whole personality may completely disintegrate.

Katatonia - katatonia is the condition in which the period of excitement alternates with that of katatonic stupor. The patient is in a state of wild excitement, is destructive, violent and abusive. He may impulsively assault anyone without the slightest provocation. Homicidal or suicidal attempts may be made. Auditory hallucinations frequently occur, which may be responsible for their violent behaviour. Sometimes, they destroy themselves because they hear God' voice commanding them to destroy themselves. This phase may last from a few hours to a few days or weeks, followed by stage of stupor.

The katatonic stupor begins with a lack of interest, lack of concentration and general apathy. He is negative, refuses to take food or medicines and to carry out his daily routine activities like brushing his teeth, taking bath or change his clothes…. The activities are so very limited that he may confine himself in one place and assume one posture however uncomfortable, for hours together without getting fatigued. His face is expressionless and his gaze vacant…. They may understand clearly everything that is going on around them, and sometime without warning and without any apparent cause, they suddenly attack any person standing nearby.

Paranoid Schizophrenia, Paranoia and Paraphrenia - Paranoia is now regarded as a mild form of paranoid schizophrenia. The main characteristic of this illness is a well elaborated delusional system in a personality that is otherwise well preserved. The delusions are of a persecutory type. The true nature of the illness may go unrecognized for a long time because the personality is well preserved, and some of these paranoiacs may pass off as social reformers or founders of queer pseudo-religious sects. The classical picture is rare and generally takes a chronic course.

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are

attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions.

Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus, may change from persecutory to grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and others.

The name paraphrenia has been given to those suffering from paranoid psychosis who, in spite of various hallucinations and more or less systemized delusions, retain their personality in a relatively intact state. Generally, paraphrenia begins later in life than the other paranoid psychosis.

Schizo Affective Psychosis - Schizo affective psychosis is an atypical type of schizophrenia, in which there are moods or affect disturbances unlike other varieties of schizophrenia, where there is blunting or flattening of affect. Attacks of elation or depression, unmotivated rage, anxiety and panic occur in this form of schizophrenic illness.

Pseudo-Neurotic Schizophrenia - schizophrenia may start with overwhelmingly neurotic symptoms, which are so prominent that in the early stages, it may be diagnosed as neurosis. When schizophrenia begins in an obsessional personality, it may for a long time remain disguised as an apparently obsessional illness.

16. In F.C.Redlich and Daniel X. Freedman in their book titled "The Theory and Practice of Psychiatry" (1966 Edn.) observed:

"Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living..."(p. 252) Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non- deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity . . . . (p. 465) (emphasis supplied)"

4. The argument advanced by learned counsel for the Petitioner substantially is that the deceased at the time of entry into the military service was not suffering from any disease, not to speak of **'Schizophrenic psychosis'**. The disease is said to have been detected after five years of service which the deceased had rendered

in the Army. By this reckoning, it cannot be said that the disease existed prior to his entry in the service of the Army.

5. **Per contra**, learned counsel for the respondents repudiated the submissions contending that the disease suffered by the Petitioner was constitutional and it was not likely to have been detected at the time of entry in the service of the Army. It is on this ground that the argument was advanced that the disease suffered by the Petitioner was neither attributable to nor aggravated by military service.

6. In connection with the above submissions, learned counsel for the Petitioner cited across the bar the decisions of Hon'ble Apex Court in Veer Pal Singh vs Union of India and **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**. In **Dharam Vir Singh (supra)**, Hon'ble Apex Court summarized the finding with regard to entitlement of payment of disability pension as contained in Para 29, which being relevant is quoted below.

> *"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).*
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> *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)."

7. A plain reading of the aforesaid proposition of law shows that the onus of proof is not on the claimant or employee but it shall be on the respondents to establish that the disease was neither attributable to nor aggravated by the Army service.

8. In another decision relied upon by learned counsel for the Petitioner decided by Armed Forces Tribunal Regional Bench Lucknow rendered in TA no 124 of 2011, besides relying upon the

judgment of **Dharam Vir Singh (supra**), the decision of Hon'ble Apex Court in Veer Pal Singh has also been taken into account. In paras 11,12,13, 17, and 18 of the said judgment, their Lordships of Hon'ble Supreme Court has relied upon the principles flowing from the decision of Dharam Vir Singh (supra). To sum up, in the aforesaid cases, the disease of of 'Schizophrenic psychosis' was considered and it was held that case was made out for payment of disability pension.

9. In another case which is **Sukhvinder Singh vs Union of India and others** reported in **2014 STPL (Web) 468 SC. , Hon'ble Apex Court considered the disease of** 'Schizophrenic psychosis' and held that in such situation, the incumbent shall be entitled for payment of pension. Para 9 of the said decision being relevant is quoted below.

> *"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. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so.* ***Fourthly, wherever 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. Fifthly, as per the extant Rules/Regulations, a disability***

leading to invaliding out of service would attract the grant of fifty per cent disability pension.

10. In view of the aforesaid settled proposition of law, we are of the firm view that the decision taken by the respondents denying the payment of disability pension, suffers from arbitrary exercise of power and the Petitioner deserves to be granted payment of disability pension.

11. As a result of foregoing discussion, the T.A is allowed and the impugned order dated 21.02.2013 is set aside with all consequential benefits. It is held that the Petitioner shall be entitled for payment of disability pension with effect from 3rd Jan 1989. Let arrears of disability pension be paid expeditiously, say within a period not exceeding four months.

12. There shall be no orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

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