Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 210 of 2015

Wednesday this the 17th day of August , 2016

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

No 6389785-L Ex-Hav Akil Ahmed Ansari, aged about 42 years, son of Shri Jamil Ahmed, Resident of Village & Post Office – Siswar Kalan, Tehsil – Rasra, District – Ballia (U.P.), Pincode – 221712.

…….. Applicant

By Legal Practitioner - Shri V.P. Pandey, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi –110011.

2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.

3. Additional Director General Personnel Services, Sena Bhawan, New Delhi -110011.

4. The Officer-in-Charge, ASC Records (South), Bangalore, Pincode – 560007.

5. Principal Controller Defence Accounts (Pensions), Draupadi Ghat, Allahabad (U.P.) – 211014.

…… Respondents

By Legal Practitioner - Shri Sidharth Dhaon, 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 wherein he has claimed the reliefs as under:-

> *"(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the impugned order dated 22 June 2011* ***{Annexure No. A-1(i)},*** *passed by respondent No 4.*
>
> *(b) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the impugned order dated 31 Jan 2012* ***{Annexure No. A-1 (ii)}*** *passed by the Appellate Committee on First Appeals.*
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> *(c) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the impugned order dated 23 April 2014* ***{Annexure No. A-1 (iii)}*** *passed by the Second Appellate Committee on Pension.*
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> *(d) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the impugned order dated 16 April 2015* ***{Annexure No. A-1 (iv)}*** *passed by the respondent No. 3.*
>
> *(e) Issue/pass an order or direction of appropriate nature to the respondents to grant disability pension to the applicant for life with effect from the date of his discharge.*
>
> *(f) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
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> *(g) Allow this application with exemplary costs."*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 04.03.1991 and after rendering 22 years 02 months and 28 days of colour service, he was discharged from service on 31.05.2011(afternoon) at his own request under the provisions of item (iii) (iv) of the table annexed to Army Rule 13 (3). At the time of discharge, he was brought before a Release Medical Board and his disability was considered as neither attributable to nor aggravated by military service and assessed as 50% for life. He

preferred disability pension claim which was rejected on 22.06.2011. His first appeal for grant of disability pension was rejected vide order dated 31.01.2012 and subsequently his second appeal was also rejected vide order dated 23.04.2014. Aggrieved, the applicant has filed the instant Original Application.

3. Heard Shri V.P. Pandey, Learned Counsel for the applicant as well as Shri Sidharth Dhaon, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled after proper medical examination and no disability or disease was noticed at the time of enrollment. He served with outmost dedication for more than 22 years. He was downgraded to low medical category S1H1A1P3(T-24)E1 w.e.f. 02.10.2008 for disease CAD-DVD,PCI TO LCX. In the next Medical Board his medical category was upgraded to S1H1A1P2E1 w.e.f 16.03.2009 and he was discharged from service on 31.05.2011 at his own request. The Government of India issued letter No. 16(5)/2008/D (Pen/Policy) dated 29 September, 2009 vide which armed forces personnel being discharged on compassionate ground are also entitled for disability pension and this has been made applicable to the personnel, who have retired on or after 01.01.2006. First time his disease was detected in 2008, as such the disease has occurred due to stress and strain of the military service and therefore, keeping in view the large number of judgments passed by this Tribunal, his disability must be considered as attributable to and aggravated by military service and he should be granted disability pension.

5. **Per contra,** Learned Counsel for the respondents has submitted that the applicant has been denied disability pension because though the Release Medical Board has opined the disability as 50% for life

but it has been considered as neither attributable to nor aggravated by military service. Rejection of the claim for disability pension has also been confirmed by the first and second appellate authorities and thus, the applicant has no case. His claim for disability pension has been rightly rejected as per Regulation 173 of Pension Regulations for the Army 1961 (Part –I), which clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and in this case the applicant has also been discharged on compassionate ground on his own request. He further submitted that the applicant was neither invalided out of service nor discharged on medical grounds but he was discharged from service at his own request on extreme compassionate grounds and his disability has been considered as neither attributable to nor aggravated by military service. Therefore, the applicant has rightly been denied disability pension as per laid down policy.

6. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules & Regulations on the subject. Relevant portions of para 173 of Pension Regulations for the Army 1961 (Part I), and the provisions of Rules 4, 5, 9, 14 and 22 of the 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 Pensionary Awards, 1982***

4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.

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 receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Disease

14. ***In respect of disease, the following rules will be observed:-***

(a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

i) That the disease has arisen during the period of military service, and

ii) That the disease has been caused by the conditions of employment in military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.

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*22. **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. In this case with regard to consideration of attributability of disability, we would like to recall the decision in the case of **Dharmvir Singh Vs. Union of India & others**, reported in (2013) 7 SCC 316, wherein the Hon'ble Apex Court has held that when there is no note of disability in service record of applicant at the time of

enrolment, it will be presumed that the applicant was in sound health before entering the service and disability has taken place during the service. Observation of the Hon'ble Apex Court is 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*
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> *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).*
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> *XXX XXX XXX*
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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 :-*
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> *"(d) In the case of a disability under (c) the Board should state what exactly in their opinion is the cause thereof.*
>
> *YES*
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> *Disability is not related to military service".*
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> *XXX XXX XXX*
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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 another case about grant of disability pension in **Sukhvinder Singh Vs. Union of India,** reported in (2014) STPL (WEB) 468 SC. 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. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent 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 percent. Fifthly, as per the extant Rules/Regulations, a disability leading to

invaliding out of service would attract the grant of fifty percent disability pension."

9. In the instant case, the applicant was enrolled in the army on 04.03.1991 and after rendering 22 years, 2 months and 28 days of service, he was discharged in low medical category. He has been denied disability pension because the Medical Board has considered the disability as neither attributable to nor aggravated by military service and that he was discharged on compassionate ground. Though as per policy letter dated 29.09.2009, personnel who are discharged on compassionate ground, are entitled disability pension but in this case, since his disability was considered as neither attributable to nor aggravated by military service, he has been denied disability pension. We observe that in this case no reasoned opinion has been given by the Medical Board on the basis of which it has come to the conclusion that the applicant's disability is neither attributable to nor aggravated by military service. We also observe that there is no note of such disease or disability in the service record of the applicant at the time of enrolment and respondents have not been able to produce any document to prove that the disease existed before his enrolment. In fact, Medical Board in their opinion on page 5 against column 2 i.e. '**Did the disability exist before entering service', has mentioned 'NO'**.

10. It is made clear in the aforesaid judgments of the 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 fit medical conditions and was discharged in low medical category. It has also been held by the Hon'ble Apex Court that simply recording a conclusion that the disability is not attributable to military service, without giving reason as to why the disease or disability is not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In absence of any evidence on record to show that the applicant was suffering from any ailment at the time of his enrollment in service, it will be presumed

that deterioration of his health has taken place due to military service. Therefore, in view of the judgment of the Hon'ble Apex Court in the cases of **Dharmvir Singh** (supra) and **Sukhvinder Singh** (supra), since he was enrolled in fit medical conditions and was discharged in low medical category, presumption has to be drawn in favour of the applicant. As per Government of India, Ministry of Defence policy letter dated 29.09.2009 personnel proceeding on voluntary retirement on or after 01.01.2006 are entitled to disability pension provided the disability is considered as attributable to or aggravated by military service. In this case, keeping in view the aforesaid judgment of **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra), the disability is to be considered as attributable to and aggravated by military service.

11. Although, learned counsel for the applicant has not pleaded in the petition for the benefit of rounding off of disability pension but 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 the Hon'ble 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 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.

12. In view of the above, we converge to the view that the impugned orders passed by the competent authority were not only unjust, illegal but were also not in conformity with rules, regulations and law. The impugned orders deserve to be set aside, keeping in view the judgment of **Dharmvir Singh** (supra) and **Sukhvinder Singh** (supra). The applicant is entitled to disability pension @ 50% for life, which needs to be rounded of to 75% as per policy letter dated 31.01.2001 and in terms of decision in the case of **Ram Avtar** (supra).

13. Thus in the result, the Original Application No. 210 of 2015 succeeds and is allowed. The impugned orders dated 22.06.2011, 31.01.2012, 23.04.2014 and 16.04.2015 passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 50% for life from the date of discharge i.e. 31.05.2011 (afternoon), which would stand rounded off to 75% in terms of the decision of the Hon'ble Apex Court in the case of **Ram Avtar** (supra). The respondents are also directed to pay arrears of disability pension with interest @ 9% per annum from date of discharge 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.

14. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Abdul Mateen)
Member (J)

Dated : August, 2016
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