Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 305 of 2013

Thursday this the 21st day of July, 2016

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

SL-4220F Lieutenant Colonel Dinesh Kumar (Retired),
Son of Late Shri Shitla Prasad, Aged about 59 years,
R/o Plot No 11, Shyam Nagar Colony, Utretia, Rai Bareilly Road, Lucknow – 226025, 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. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office- New Delhi.

3. The Adjutant General, Adjutant General's Branch Integrated Headquarter, Ministry of Defence (Army), Wing No 3, Ground Floor, West Block – III, R.K. Puram, New Delhi.

4. The Principal Controller of Defence Accounts (Pensions) Draupadi Ghat, Allahabad (U.P.)

…… Respondents

By Legal Practitioner Shri Namit Sharma, Learned Counsel for the Central Government assisted by Lt Priya Prasad, Departmental Representative.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 whereby and he has claimed the reliefs as under:-

> *"(I) The Hon'ble Tribunal may kindly be pleased to set aside the order dated 31/05/2011 (Annexure No A-1), 03/05/2012 (Annexure No A-2) and 28/05/2013 (Annexure No A-3).*
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> *(II) The Hon'ble Tribunal may kindly be pleased to set aside the finding of the medical board holding the disability as not attributable and not aggravated by the service condition.*
>
> *(III) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension to the applicant w.e.f. the date of discharge from the service along with its arrears with interest at the rate of 18 percent per annum.*
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> *(IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case."*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army as Sepoy on 14.05.1977 and was subsequently commissioned in the Army as an officer on 03.06.1995 and retired from service on attaining the age of superannuation on 31.08.2011 in low medical category S1H1A1(P2)E1. He was brought before the Release Medical Board before his retirement which viewed his disabilities; (I) "DIABETES MELLITUS TYPE-2"- 20% and (II) "PRIMARY HYPERTENSION" -30% and

composite disability was assessed as 40% which was considered neither attributable to nor aggravated by military service. His claim for disability pension was rejected vide order dated 31.05.2011 and subsequently his both appeals were rejected vide orders dated 03.05.2012 and 28.05.2013 respectively. Aggrieved the applicant has filed this Original Application No. 305 of 2013.

3. Heard Shri R Chandra, Learned Counsel for the applicant, Shri Namit Sharma, Learned Counsel for the respondents duly assisted by Lt Priya Prasad, Departmental Representative and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled in the army in fit physical and mental condition and at the time of enrolment he did not have any disease or disability and subsequently was commissioned as an officer. The applicant has no past history of these disease and his parents also did not suffer from these disease. Both these disease were detected in the year 2003 when the applicant was posted in Rashtriya Rifles Battalion and subsequently he was placed in medical category P3 (T-24) for DIABETES MELLITUS TYPE-2 in 2009 and later in February 2010, he was placed in low medical category P2 (P) for DIABETES MELLITUS TYPE-2 and PRIMARY HYPERTENSION.

5. Learned Counsel for the applicant further submitted that he has served in the army for over 34 years wherein he

has served in Counter Insurgency (Operations), Field Areas, Operation Rakshak and Operation Parakram. It is apparent that the disease has arisen due to rigorous military duty as also due to stress and strain of service. Learned Counsel for the applicant submitted that various Benches of Armed Forces Tribunal have granted disability pension in similar cases and that his case is also covered by judgment of Hon'ble the Apex Court in the case of **Dharmvir Singh Vs. Union of India & others** reported in (2013) 7 SCC 316.

6. **Per contra,** Learned Counsel for the respondents submitted that the disability of the applicant has been considered as neither attributable to and nor aggravated by military service as such his disability pension was rejected. Rejection of the claim for disability pension has also been confirmed by the first and second appellate committees 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 from service on account of disability, which is attributable to or aggravated by military service. He further submitted that disability pension of the applicant has correctly been rejected as per laid down policy.

7. We feel it would be appropriate to examine the relevant Rules & Regulations on the subject. Before dealing

with the rival submissions, relevant portions of the 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."

8. With regard to consideration of disability as attributable/aggravated by military service, we recall the case of **Dharmvir Singh Vs. Union of India & others** reported in (2013) 7 SCC 316 (supra) wherein the Hon'ble Apex Court has held 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 Pensions), 2002 -"Entitlement : General Principles", including Paras 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."

9. In this case on the similar issue we also recall the judgment and order in case of **Sukhvinder Singh Vs. Union of India,** reported in (2014) STPL (WEB) 468 SC wherein 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."

10. We recall the case of **Veer Pal Singh vs. Ministry of Defence** reported in (2013) 8 SCC 83 in paras 11,12,13,17,18 and 19 of the judgment, the observations made by Hon'ble The Apex Court 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 bahaviour 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 behaviuor – 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. In **Union of India and Ors vs. Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th 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 the personnel who have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant is excerpted below:

> *"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.*
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> *XXX XXX XXX*
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> *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.*
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> *7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in 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."*

12. In the instant case 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 in the column 2 '**Did the disability exist before entering service' has mentioned 'NO'**. No reasoned opinion has been given by the medical board on the basis of which medical board has come to the conclusion that the applicant's disability is neither attributable to nor aggravated by military service. Conclusion of opinion without giving reasons is not a valid medical opinion. It is also observed that duration of disability is not given, in fact, in the relevant column NIL is mentioned. Therefore, in view of the judgment of Hon'ble The 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, the applicant is considered entitled to disability pension. When direction of Hon'ble The Apex Court in case of **Ram Avtar** (supra) is applied to the instant case, it leads us to the conclusion that the applicant is entitled to the benefit of rounding off. We are also of the view that since the duration of disability is

not mentioned in the medical board proceedings, in terms of judgment and order of **Veer Pal Singh** (supra), the applicant needs to be brought before re-survey medical board to assess the duration of disability for grant of disability pension as also for further entitlement of disability pension, if any.

13. In view of our observations as stated above, we are of the opinion that the impugned orders passed by the competent authority were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders deserve to be set aside and the applicant is considered entitled to disability pension @ 40% in terms of decision of Hon'ble The Apex Court in case of **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra) which needs to be rounded off to 50% as per policy letter dated 31.01.2001 and in terms of decision of **Ram Avtar** (supra). The applicant needs to be brought before re-survey medical board in terms of decision of **Veer Pal Singh** (supra) for deciding the duration of the existing disability as also his medical condition for further entitlement of disability pension, if any. The applicant also deserves to be paid interest on the amount of arrears @ 9% per annum from the date of discharge.

14. Thus in the result, the Original Application No. 305 of 2013 is allowed. The impugned orders dated 31.05.2011, 03.05.2012 and 28.05.2013 passed by the respondents are

set aside. The respondents are directed to grant disability pension to the applicant @ 40% from the date of discharge, which would stand rounded off to 50%. The respondents are further directed to refer the applicant's case to re-survey medical board for re-assessing duration of the existing disability of the applicant for entitlement of disability pension as also his medical condition for further entitlement of disability pension, if any. 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.

15. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Abdul Mateen)
Member (J)

Dated : July, 2016
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