

Court No.1(B)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 3 of 2016Friday this the 7th day of April, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Vinod Kumar Tewari
 S/o Bhagwat Prasad Tewari
 R/o Pure Awasthi
 Post - Deeh
 Distt - Sultanpur

..... Petitioner

By Legal Practitioner - Shri P.K. Shukla, Advocate.

Versus

1. Union of India through Secretary,
Ministry of Defence, D.H.Q., P.O., New Delhi.
2. Chief of the Army Staff, Army Headquarters,
D.H.Q., P.O., New Delhi.
3. Medical Board, Though Commanding Officer,
Military Hospital, Pathankot.
4. P.C.D.A. (Pension), Draupadi Ghat, Allahabad.

..... Respondents

By Legal Practitioner - Shri Ashish Kumar Singh,
 Learned Counsel for Central Govt.





ORDER (ORAL)

1. Being aggrieved with non grant of disability pension, the petitioner had filed Civil Writ Petition No. 5627 of 2000 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow which has been transferred to this Tribunal in pursuance to provisions contained in Section 34 of the Armed Forces Tribunal Act 2007 and registered as T.A. No. 03 of 2016.
2. Heard Shri P.K. Shukla, Learned Counsel for the petitioner and Shri Ashish Kumar singh, Learned Counsel for the respondents and perused the record.
3. Admittedly the petitioner was enrolled in the Army on 08.02.1995 and was discharged from service on 30.03.1999 in low medical category due to "SEIZURE DISORDER 345 V-67". On 13.01.1999, the petitioner was placed in medical category EEE and was discharged from service on 30.03.1999. Medical Board assessed his disability as 6-10% for two years and found it as neither attributable to nor aggravated by military service. His claim for disability pension was rejected vide order dated 21.12.1999 on the ground that his disability was considered as neither attributable to nor aggravated by military service. The petitioner preferred an appeal against the rejection of disability pension claim which was also rejected vide order dated 03.05.2000. Aggrieved by non grant of disability pension, he filed a Civil Writ Petition No. 5627 of 2000 before the Hon'ble High Court of Judicature at Allahabad, Lucknow



T.A. No. 3 of 2016 Vinod Kumar Tewari

Bench, Lucknow which has now been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act 2007 and renumbered as T.A. No 3 of 2016.

4. Learned Counsel for the petitioner submitted that at the time of enrollment, he was medically examined and was found mentally and physically fit for service in the Army and there is no note, in the service documents that he was suffering from any disease. The disease has occurred to him due to stress and strain of the severe military service, as such, his disability must be considered as attributable to and aggravated by military service and he should be granted disability pension. He further submitted that his case is covered by judgment of Hon'ble The Apex Court in the case of **Dharamvir Singh Vs. Union of India & others reported in (2013) 7 SCC 316**, as such the petitioner be granted disability pension as well as arrears thereof. Learned Counsel for the petitioner has also prayed for rounding off of disability pension to 50% as per Government Policy dated 31.01.2001.

5. Learned Counsel for the respondents submitted that as per policy petitioner's disability pension claim was preferred to PCDA (Pension), Allahabad, for adjudication and was rightly rejected as per Paragraph 173 of Pension Regulations 1961 (Part-1), which clearly states that disability pension may be granted to an individual who is invalidated from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is

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assessed as 20% or above. Since, the Medical Board assessed his disability as 6-10% only, therefore, the petitioner has no case and his disability pension has rightly been denied by the competent authority vide orders dated 21.12.1999 and 03.05.2000. Though initially he contested the grant of disability pension but subsequently conceded that in consonance with various judgments of Hon'ble The Supreme Court and Armed Forces Tribunals, the petitioner is entitled to disability pension.

6. We have gone through the relevant rules and regulations on the issue of attributability of disability to military service. We would like to refer to the judgment and order of Hon'ble The Apex Court in the case of **Dharamvir Singh Vs. Union of India & others** reported in **(2013) 7 SCC 316**, in which Hon'ble The Apex Court has held as under:-

"29.1. Disability pension to be granted to an individual who is invalidated 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).

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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

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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."*

7. On this issue we would also like to recall the judgment passed 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....."




8. In the instant case, the petitioner has been denied disability pension because the Medical Board has assessed his disability as 6 to 10% and considered it as neither attributable to nor aggravated by military service. We observe that in this case the Medical Board has not given any reason on the basis of which it has come to the conclusion that the petitioner'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 petitioner 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 3 against column 1 i.e. '**Did the disability exist before entering service**', has mentioned '**NO**'. Therefore, in view of the judgment of Hon'ble The Apex Court in the cases of **Dharamvir 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 petitioner and the disability is to be considered as attributable to and aggravated by military service. Since the Medical Board has assessed the disability of the petitioner as 6 to 10% for two years, we are of the view that in terms of judgment of Hon'ble The Apex Court in the case of **Veer Pal Singh Vs. Ministry of Defence** reported in (2013) 8 SCC 83, the petitioner needs to be brought before Review Medical Board to re-assess his medical condition for further entitlement of disability pension.



9. In consonance with the Policy Letter No.1(2)/97/D (Pen-C) dated 31.01.2001 and in terms of the decision of Hon'ble The Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors (Civil Appeal No 418 of 2012 dated 10th December 2014)**, we are of the view that the petitioner is entitled to the benefit of rounding off.

10. Keeping in view the aforesaid, we are of the view that the impugned orders dated 21.12.1999 and 03.05.2000 are 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 **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra). The petitioner is entitled to disability pension @ 6-10% for two years which needs to be rounded off to 50% as per policy letter dated 31.01.2001 and in terms of decision of Hon'ble The Apex Court in the case of **Ram Avtar** (supra). We are also of the view that the petitioner needs to be brought before Review Medical Board in terms of decision of Hon'ble The Apex Court in the case of **Veer Pal Singh** (supra) to re-assess his medical condition for further entitlement of disability pension, if any.


11. Thus in the result, the **Transferred Application No. 3 of 2016** succeeds and is allowed. The impugned orders dated 21.12.1999 and 03.05.2000 passed by the respondents are set aside. The respondents are directed to grant disability pension to the petitioner which would stand rounded off to 50% for two years from the date of discharge.

The respondents are directed to pay the enhanced disability pension



alongwith the arrears within four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment. The respondents are further directed to refer the petitioner's case to Review Medical Board for re-assessing the medical condition of the petitioner for further entitlement of disability pension, if any.

12. No order as to costs.


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(Lt Gen Gyan Bhushan)
Member (A)

Dated : 7th April, 2017
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(Justice D.P. Singh)
Member (J)