

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 259 of 2015**

Wednesday, this the 19th day of July, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 1577092 Ex Sapper Jaivir Singh
 Son of Chhidda Singh, resident of village Maman,
 Post Bohich, District Bulandshahar, U.P. - Applicant

Ld. Counsel for the : Shri K.K. Mishra, Advocate
 Applicant

Vs

1. Union of India, through its Secretary,
 Ministry of Defence,
 New Delhi.
 2. The Chief of Army Staff,
 HQ, New Delhi.
 3. Records,
 Bombay Engineer Group Kirkee.
 4. PCDA (P),
 Allahabad.
- Respondents

Ld. Counsel for the : Dr. Shailendra Sharma Atal, Advocate,
 Respondents. Assisted by Maj Salen Xaxa,
 OIC Legal Cell.

ORDER (Oral)

1. This is a petition under Section 14 of the Armed Forces Tribunal Act, 2007, preferred by the applicant being aggrieved by denial of disability pension.

2. We have heard learned counsel for the applicant Shri K.K. Mishra as well as learned counsel for the

respondents Dr. Shailendra Sharma Atal, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

3. Admittedly, brief facts of the case are that the applicant was enrolled in the Indian Army on 23.06.1986 and invalided out from service on 12.08.1988 being medically unfit for further service in low medical category 'EEE' as a case of 'SCHIZOPHRENIA (295)'. By that time applicant had rendered 2 years, 1 month and 20 days' service. Initially the applicant was admitted in Military hospital, Kirkee on 18.03.1988 as a case of 'SCHIZOPHRENIA' and thereafter he was transferred to Command Hospital (Southern Command), Pune on 22.03.1988, where he underwent treatment up to 04.08.1988. After all possible treatment, he was recommended for invaliding out from service in medical category 'EEE'. His disability was opined as 'SCHIZOPHRENIA' and was assessed as 60%. Later on he was discharged from Army on 12.08.1988.

4. After discharge, the applicant made a prayer for payment of disability pension, which was refused. Representation submitted by the applicant remained unattended, hence he preferred a petition in April, 2014. Delay in filing the petition has already been condoned by the Tribunal vide order dated 24.09.2015.

5. Admittedly, at the time of discharge applicant was suffering from some mental disease, diagnosed as 'SCHIZOPHRENIA'. According to the medical report, applicant was found to be suffering from 'SCHIZOPHRENIA' and his disability was assessed as 60% and accordingly he was recommended for discharge from service under low medical category 'EEE'. However, medical report further shows that the disease 'SCHIZOPHRENIA' is likely to be cured, as on account of his treatment there has been good improvement in his conditions. The relevant portion of the medical report is reproduced as under :-

" This 24 years old soldier having 2 years of service is a case of 'SCHIZOPHRENIA'. His illness was of rather sudden onset and manifested with gross behavior abnormalities vis refusing orders, touching feet of others and passing urine in public. He also showed aggressive behavior which was episodic in nature.

On 18 Mar 88 he was admitted to MH Kirkee and subsequently transferred to this hospital (centre) for further treatment. Clinical examination and investigations ruled out organic basis for his behaviour abnormality. Psychiatric examination brought out catatonic 'Schizophrenia' features. He was ill kept and was making odd gestures and assuming bizarre postures. He was un-co-operative and negativistic and spoke very little. He was aloof and apathetic, aimless laughing and crying was noted and he had ideas of reference, persecutory, delusions and 2nd person

auditory hallucinations is clear (sic). He lacked insight and judgment was impaired.

With the diagnosis of 'Schizophrenia' was treated with drugs and there has been good improvement in his conditions. Except for few residual features no other features of illness noted.

He gives history of brief episode of auditory hallucination prior to joining service which disappeared within a few days after treatment.

In view of psychotic illness in a young soldier having hardly two years of service, in my opinion he is unfit for further military service. Recommended medical category 'EEE' (Psychological). Advised to continue tab Lergistil 100gm 1 x sic minimum 8 months.

Sd/- PS Valdiya
Lt col AMC
Associate Professor
in Psychiatry
AMC, Pune"

6. Keeping in view the medical report, applicant seems to be suffering from a mental disease, diagnosed as 'SCHIZOPHRENIA', almost after his 2 years of service. There is no material on record that he was suffering from the disease prior to his enrolment in Indian Army. However, learned counsel for the respondents Dr. Shailendra Sharma Atal, assisted by Maj Salen Xaxa, OIC Legal Cell argued that since the applicant was suffering from a disease prior to his enrolment in Indian Army, which could not be detected at entry level, he is not entitled for disability pension.

7. Law with regard to disability pension is no more res-integra in view of law laid down by Hon'ble Supreme Court, vide ***Dharamvir Singh vs. Union of India and others*** (2013) 7 SCC 316. So far as rounding off of the disability pension is concerned, we feel to recall the judgment and order of Hon'ble The Apex Court of **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 retired on attaining the age of superannuation or completion of their tenure of engagement, if found to be suffering from some disability.

8. In view of above, we feel that the applicant is entitled to disability pension since at the time of his entry in the Army on medical examination it was not found that he is suffering from any mental disease. On being found medically fit, applicant was enrolled in the Army and he also served the Army for about 2 years. After serving of the applicant for about 2 years, it is not open to the respondents to say that the disease could not be detected at entry level.

9. Accordingly, O.A. is allowed. The respondents are directed to pay disability pension to the applicant to the tune of 60%, which is rounded off to 75% for the period of

one year, followed by re-survey medical board within a period of 3 months from today. Applicant shall also be entitled for disability pension after the period of one year from the date of discharge again in terms of opinion expressed by re-survey medical board. Let consequential benefits be paid to the applicant expeditiously. However, the applicant shall be entitled for arrears of disability pension for initial one year i.e. the period for which he was kept in low medical category 'EEE' and also for three preceding years from the date of filing of present petition and thereafter, keeping in view the report of the re-survey medical board.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: July 19,2017
JPT