

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO. 1****O.A. No. 04 of 2016****Wednesday, this the 26th day of July, 2017****"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"****Ex Recruit Arvind Kumar (Army No. 2992706-P), of Rajput Regiment and Centre, Fatehgarh, C/o 56 APO, son of Shri. Shambhoo Saran, resident of Village & Post Office – Takharau, Tehsil – Karhal, District – Mainpuri (U.P.), Pincode – 205268.****.....Applicant****Ld. Counsel appeared
for the Applicant****- Shri K.K. Singh Bisht, 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. Officer-in-Charge Rajput Regiment Abhilekh Karyalaya Records, The Rajput Regiment, PIN – 900427, C/o 56 APO.

4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) – 211014.

.....Respondents**Ld. Counsel appeared
for the Respondents****- Shri Virendra Kumar Singh
Advocate.****Assisted by OIC Legal Cell****- Maj Salen Xaxa.**

ORDER**“Per Hon’ble Air Marshal Anil Chopra, Member ‘A’”**

1. Present Application under section 14 of the Armed Forces Tribunal Act 2007 has been preferred against denial of disability pension.

2. We have heard learned counsel for the Applicant Shri K.K. Singh Bisht as also Shri Virendra Kumar Singh, learned counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

3. The factual matrix of the case is that the applicant was enrolled in Indian Army on 20.02.1994 and was invalided out from service on 16.04.1995 under Army Rule (iv) before fulfilling the conditions of enrolment in low Medical Category EEE due to disability “GENENRALISED SEIZURES 345 FRO IMB V 67” after rendering 01 year 01 month and 26 days qualifying service. As per AFMSF -16 dated 25.02.1995, the disability of the applicant was accepted as neither attributable to nor accepted as aggravated by military service and the disability was initially assessed as 20% for one year by the Competent Medical Authorities.

4. Learned counsel for the Applicant submits that at the time of recruitment, the Applicant was thoroughly examined and there was not an iota of evidence that the

Applicant was suffering from any disease at the time or prior to his enrolment in the Army. As a matter of fact, the disease which was diagnosed had its genesis while serving in the Army.

5. On the other hand, learned counsel for the respondents repudiated the above submissions contending that the Doctor attending on the Applicant has clearly opined that the disability which the Applicant was suffering from was neither attributable to nor aggravated by Military service.

6. It would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portions of the Pension Regulations for the Army 1961 (Part I), Chapter IV of Entitlement Rules 1982 and the provisions of Rules 5, 9, 14(b) and 20 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) Chapter IV – Entitlement Rules

Entitlement Rules for Casualty Pensionary Awards, 1982

Rule 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.

(c) Entitlement Rules for Casualty Pension Award, 1982

"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.

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(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.

a. The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.

Disease

14. In respect of diseases, the following rule will be observed:-

(a) cases.....

(b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

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20. 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. On the question when disability was not attributable to Military Service, we feel called to refer to the case of **Dharmvir Singh Vs. Union of India & others (supra)** 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 Pension), 2002 -"Entitlement : General Principles", including paragraphs 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."

8. We may also refer to the decision 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 behaviour 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 Mr. 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 behavior – 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."

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20. 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 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."

9. In the instant case, the opinion of the Lt Col A.K.Mahapatra classified Specialist (Medicine and Neurology) CH (OC) Lucknow during the Invaliding Medical Board is reproduced below.

"This 19 yrs old male recruit with 10 months trg was seen to have two episodes of convulsive seizures on 30 Nov 94. The first episode happened while he was working and the second are occurred when he was being evacuated to

hospital in vehicle. He had unconsciousness tonic clonic convulsions of all limbs and tongue bite. There has been no seizure recurrence while in hospital.

He denies h/o epileptic fits in past nor any body in family had epilepsy. He had no head trauma, CSOM and CNS infection in the past. BP 120/80 ...The pulse -78/mg regular. No paller/Lymphadenopathy seen systemic investigation is normal. Neurological examination does not reveal any abnormality. Fundi are normal. Skull and spine-NAD-.....

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He is in care of generalised seizure and is not likely to be a fit soldier in Armed Forces. Recommended to be invalided out of service in cate EEE.”

Further in Column 1 of Part III of Medical opinion it clearly states in response to query “Did he disability/ies exist before entering service”, “No”. From the aforesaid it is very clear that disability did not exit prior to entering service. The bald opinion unsupported with any reasons does not commend to us for acceptance as at the time of recruitment thorough medical check-up was carried out and the Applicant was found medically fit and there is no mention of such disease existing. It is thus not clear on what basis the Board has recommended disability as not attributable to or aggravated by Military Service. The Pension Sanctioning Authority has passed the impugned order of rejection based on the report of the Medical Board. In absence of any evidence on record to show that the Applicant was suffering from disability at the time of his

acceptance in service it will be presumed that the Applicant 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.

10. In view of the law laid down by Hon'ble The Apex Court in the cases of **Dharamvir Singh, Veer Pal Singh and Sukhvinder Singh (Supra)**, in the instant case admittedly the Applicant at the time of joining the Army service was in sound physical and mental condition as no note of any disability or disease was made at the time of Applicant's acceptance for Army service. Hence opinion of the Medical Board that the disease is neither attributable to nor aggravated by Army Service, being sans of reasoned opinion, is not at all justified.

11. In view of the above, we are of the considered view that the impugned order passed by the Respondent no.4 as contained in the letter of the CCDA (P) Allahabad dated 20.02.1996 (Annexure A-1 (i)) was not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the Respondent no.4 deserve to be set aside and the Applicant is held entitled to disability pension @20% for two years from the date of discharge with interest at the rate of 9% per annum. In view of the law laid down by Hon'ble The

Apex Court in the case of Veer Pal Singh (Supra), we are of the view that in the interest of justice, the Applicant be referred to the Re-Survey medical board for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any.

12. Since the Applicant has been held entitled to disability pension, referring to the oral prayer made by Learned Counsel for the Applicant in Para 3 of this judgment/order for the relief of rounding off of disability pension, we are of the view that regard being had to the decision of Sukhvinder Singh (supra), the substance of which is "*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*" , we are of the view that Applicant shall be entitled to disability pension at the rate of 20% which shall stand rounded off to 50% for two years from the date of discharge.

Order

13. Thus in the result, the Original Application succeeds and is allowed. The impugned order passed by the Respondent no.4 as contained in the letter of the CCDA (P) Allahabad dated 20.02.1996 (Annexure A-1 (i) is set aside. The applicant is entitled for disability pension @

20% for two years which shall stand rounded off to 50% in terms of the decision of the Apex Court in **Sukhvinder Singh (supra)** from the date of discharge. The Respondents are also directed to pay arrears of aforesaid disability pension till the date of payment. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order. In case payment of arrears is not made within the stipulated period, the Applicant would be entitled to interest at the rate of 10% per annum of the arrears of disability pension till the date of payment. In view of the law laid down by Hon'ble The Apex Court in the case of Veer Pal Singh (Supra), we are of the view that in the interest of justice, the Applicant be referred to the Re-Survey medical board for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any.

10. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated : July, 2017

BL/MH