

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 177 of 2014

Thursday this the 11th day of February, 2016

Hon'ble Mr. Justice V.K. DIXIT, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex-Sepoy Nagendra Kumar Pandey (Army No. 15165616-H) of DSC Centre Cannanore, aged about 29 years, son of Shri. Rama Shanker Pandey, resident of Village-Ahopur, Post Office-Babhniheter, Tehsil-Meza, District-Allahabad (U.P.),
Pincode-212303

..... Applicant

By Legal Practitioner 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 Defence Security Corps Records, Cannanore, PIN-901277, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, 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, and he has claimed the reliefs as under:-

- “(a) *Issue/pass an order or direction to the respondents to quash/set-aside the Defence Security Corps Records letter No. Pen/DP-4/15165616H/Vol-79/ dated 04.05.2011 {Annexure No. A-1(i)} by which he had been denied the entitled 50% disability pension, DSC Records letter No. Pen/DP-2/15165616H dated 29.05.2012 (which was not received by the applicant) and the denial of disability pension vide Defence Security Corps Records letter No. Pen/DP-2/15165616H dated 18.10.2013 {Annexure No. A-1(ii)}.*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to grant 50% disability pension to the applicant for life with effect from 10.02.2011.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with costs.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 04.07.2003 and was discharged from on 28.02.2009 (afternoon) under the provisions of Army Rule 13 (3) Item III (iv) and thereafter he was enrolled in DSC on 21.06.2010 and his former service was counted towards DSC service as per the option exercised by him. He was discharged from DSC on 09.02.2011 (afternoon) under the provision of Army Rule 13 (3) item III (iii). Medical board held before his discharge assessed his disability for **ACUTE AND TRANSIENT PSYCHOTIC DISORDER** as 40% for life and considered it neither attributable to nor aggravated by military service. His claim for disability pension was

rejected and the decision was communicated to him vide DSC Records order dated 04.05.2011. Aggrieved, the applicant filed this instant Original Application. Delay in filing of Original Application has been condoned vide order dated 26.08.2014.

3. Heard Shri K.K. Singh Bisht, Learned Counsel for the applicant, Mrs. Deepti Prasad Bajpai, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant at the time of enrolment in Indian Army after proper medical check up and at the time of discharge was in medical category Shape-1 and was declared fit for DSC as well as civil service. He was reemployed in DSC and at the time of enrolment again there was no medical deficiency found. The applicant was medically invalided out from DSC service with 40% disability but was not given the medical board proceedings. He was not granted disability pension. Learned Counsel submitted that authorities are acting arbitrarily and depriving him the opportunity of first and second appeal on the ground of delay.

5. **Per contra**, Learned Counsel for the respondents submitted that the applicant was reenrolled in DSC on 21.06.2010 for an initial fixed and contractual terms of engagement of 10 years. His former service was counted towards DSC service as per the option exercised by him. He was discharged from service due to diagnosis “**ACUTE AND TRANSIENT PSYCHOTIC DISORDER**” and his disability was considered as neither attributable to nor aggravated by military service and assessed the disability as 40% for life but considered it nil percentage of disability qualifying for disability pension. His disability claim was

rejected and was communicated to him vide letter dated 04.05.2011 with an advice to prefer an appeal against the rejection of disability pension claim, if he desired so. He preferred the appeal after a long gap of two years and accordingly, the applicant was intimated that his appeal cannot be considered due to delayed processing of the same, vide DSC Records letter dated 18.10.2013.

6. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules & Regulations on the subject. 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.”

7. In the case of Dharamvir Singh Vs. Union of India & others reported in (2013) 7 SCC 316 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.”*

8. **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 Union of India vs. Rajbir Singh, Civil Appeal No. 2904 of 2011 decided on 13.02.2015**, Hon’ble The Apex Court has held as under:

“16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains un rebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.”

10. **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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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.

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.”

11. This direction of Hon'ble The Apex Court leads us to the conclusion that the applicant, who was discharged from service on account of his being in low medical category on completion of his tenure of engagement or who was invalidated out of service, if found to be suffering from some disability, would also be entitled to the benefit of rounding off.

12. In the instant case no reasoned opinion has been given by the medical board on the basis of which medical board

has concluded that the applicant's disease is neither attributable to nor aggravated by military service. The medical board as assessed the disability as 40% for life but has mentioned that for the disability pension, it is nil for life. Again, no reasoned opinion has been given. Mere conclusion without reasons is not valid medical opinion. 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 page 5 in the column '**Did the disability exist before entering service**' has mentioned '**NO**'. 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 he was in sound health at the time of entering service and deterioration of his health has taken place due to military service. Therefore, in view of the judgment of the Hon'ble The Apex Court in the cases of **Dharamvir Singh Vs. Union of India & others** (supra), **Sukhvinder Singh Vs. Union of India** (supra) and **Union of India & others vs. Rajbir 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 such, the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court.

13. In view of the above, we are of the considered view 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 entitled to

disability pension @ 40% for life, which would stand rounded off to 50% in terms of decision of **Sukhvinder Singh vs. Union of India & others** (supra) and **Union of India and Ors vs. Ram Avtar & ors** (supra). 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. 177 of 2014 is allowed. The impugned orders dated 04.05.2011 and 18.10.2013 are set aside. The respondents are directed to grant disability pension to the applicant @ 40% for life from the date of discharge, which would stand rounded off to 50% in terms of the decision of Hon'ble The Apex Court in the case of **Sukhvinder Singh vs. Union of India & others** (supra) and **Union of India and Ors vs. Ram Avtar & ors** (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 three 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 V.K. DIXIT)
Member (J)

Dated : February, 2016
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