Court No. 1 (List B)
Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 23 of 2016

Friday this the 07th day of April, 2017

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

Ex-AC Umendra Prasad Rai (661438) of 52 Squadron, Air Force, C/o 56 APO, Son of Late Surendra Rai, Resident of 591/626, Baldev Vihar, Telibagh Post Kharika District Lucknow (U.P.) 226025.

..... Applicant

By Legal Practitioner : Shri R Chandra,
Ld. Counsel for the Applicant.

Vs.

1. Union of India through Secretary, Ministry of Defence,South Block, New Delhi-110011.
2. Chief of the Air Staff, Integrated HQ of Ministry of Defence (Air), Vayu Bhawan, New Delhi – 110011.
3. Air Officer Commanding-in-Chief, HQ Southern Air Command, C/o 56 APO.
4. Commanding Officer, HQ Southern Air Command (Unit), Air Force Station, C/o 56 APO,
5. Air Force Record Office, Subroto Park, New Delhi-110010.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

By Legal Practitioner : Dr Shailendra Sharma Atal,
Ld. Counsel for the respondents.

ORDER

"Per Hon'ble Lt Gen Gyan Bhushan, Member (A)"

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for rounding off of disability pension, whereby he has claimed the following reliefs :

> *"(a) To issue/pass an order/direction appropriate nature to the respondents to quash the Release Medical Board proceedings holding the 20% for two years disability pension neither attributable nor aggravated by Military Service with effect from 12.2.1993.*
>
> *(b) Issue/pass an order or direction of appropriate nature to the respondents to hold the disability of the applicant attributable to Air Force service in view of Regulation 153 of the Pension Regulations for the Air Force, 1961, Entitlement Rules for Pensionary Casualty Awards, 1982 and as per Para 423(c) of the Regulations for the Medical Forces of the Armed Forces, 1983.*
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> *(c) To issue or pass an order or direction of appropriate nature to set aside/quash the rejection of the appeal dated 16.01.2014, because of the decision that the rejection of the appeal is the product of non application of mind by the Appellate Authority and it does not have any sanction and sanctioning of law. However, the respondents may be directed to provide pre-release medical documents not furnished till the date of the application.*
>
> *(d) Issue/pass an order or direction to the respondents to grant him 20% disability pension from 01-09-1993 for two years and thereafter the direction should be given to hold the Re-Survey Medical Board to decide about the disability existing and then commensurately allow him disability pension.*
>
> *(e) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
>
> *(f) Allow this application with costs."*

2. The factual matrix of the case is that the applicant was enrolled in the Air Force on 14.08.1978 and was discharged from service on 31.08.1993 in low medical category. The Medical Board considered his disabilities as neither attributable to nor aggravated by service and assessed it as 20% for two years. The applicant preferred an appeal which has been rejected vide order dated 16.1.2014. Aggrieved, the applicant has preferred this Original Application. The delay in filing the Original Application has been condoned vide order dated 19.01.2016.

3. We have heard Shri R Chandra, learned counsel for the applicant, Dr Shailendra Sharma Atal, learned counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was considered medically and physically fit to join the Air Force. The disease has occurred to him during service, as such, keeping in view the large number of judgements passed by the various Benches of Armed Forces Tribunal, his disability must be considered as attributable to and aggravated by service and he should be granted disability pension. He also made oral prayer for rounding off of his disability pension.

5. **Per contra**, Learned Counsel for the respondents submitted that as per policy applicant's disability pension claim was rightly rejected as per Paragraph 153 of Pension Regulations for the Air Force, 1961, 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 and percentage of disablement is assessed

as 20% or above. Therefore, the applicant has no case and his disability pension has rightly been denied by the competent authority vide order dated 16.01.2014. However, subsequently Ld. Counsel for the respondents conceded that as per Hon'ble The Apex Court's judgement and the judgment passed by the Tribunal on similar cases, the applicant is entitled for the disability pension.

6. We have gone through the relevant rules and regulations on the issue on the question 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 and Ors** reported in **(2013) 7 Supreme Court Cases 316,** in which Hon'ble The Apex Court had observed the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

> *"29.1. Disability pension to be granted to an individual who is invalided 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).*
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> *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)].*
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> *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).*
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> *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 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. We would also like to recall the judgment on grant of disability pension passed in the case of **Sukhvinder Singh Vs. Union of India,** reported in (2014) STPL (WEB) 468 SC, in para 9 of the judgment 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. Since the Medical Board has assessed the disability as 20% for 2 years, we recall the case of **Veer Pal Singh vs. Ministry of Defence** reported in (2013) 8 SCC 83, 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 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 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."

9. In the instant case, the applicant was enrolled in the Air Force on 22.08.1978 and was discharged from service on 31.08.1993 in low medical category. The Medical Board considered his disabilities as neither attributable to nor aggravated by service and assessed the percentage of disability as 20% for two years. In the cases of **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra), it has been clearly postulated that when there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for service, it would 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. In this case the Medical Board in their opinion on page 3 against column 1 i.e. **'Did the disability exist before entering service',** has mentioned **'NO'**. Respondents have not produced any evidence to prove that the disease existed prior to enrolment. The applicant's case is covered by **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra) and he is entitled to disability pension.

10. For entitlement of rounding off, we recall the decision of Hon'ble The Apex Court in the case of **Union of India and Ors v 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 terms of engagement, if found to be

suffering from some disability. Keeping the policy letter dated 31.01.2001 and judgment of **Ram Avtar & ors** (supra), we are of the view that the applicant is entitled to the benefit of rounding off.

11. On the issue of delay and payment of arrears, we recall the case of **Shiv Dass Vs Union of India reported in 2007 (3) SLR 445** wherein in Para 9 of the judgment, Hon'ble The Apex Court has observed:-

> *"9. In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."*

12. Keeping in view the judgments of **Dharamvir Singh**, and **Sukhvinder Singh**(supra), we converge to the view that the impugned order passed by the respondents was not only unjust, illegal but was also not in conformity with rules, regulations and law and the impugned order deserves to be set aside. The applicant is entitled to disability pension @ 20% 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 applicant needs to be brought before Re-Survey Medical Board to reassess his medical condition for further entitlement of disability pension, if any.

13. Thus in the result, the **Original Application No. 23 of 2016** succeeds and is allowed. The impugned order dated 16 Jan 2014 is set aside. The respondents are directed to grant disability pension to the applicant @ 20% for two years from the date of discharge, which would stand rounded off to 50% in terms of policy letter dated 31.01.2001 and in terms of decision of

Hon'ble The Apex Court in the case of **Ram Avtar** (supra). The respondents are directed to pay arrears of disability pension alongwith 9% interest from three years prior to filing of the Original Application i.e. 26 Mar 2014 till the date of actual payment. The respondents are further directed to refer the applicant's case to Re-Survey Medical Board in terms of decision of Hon'ble The Apex Court in the case of **Veer Pal Singh** (supra) for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order.

14. No order as to costs.

Bhushan
7.4.17

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated : 7th April, 2017
PKG