Court No.1(B)

Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL,
BENCH, LUCKNOW

Original Application No. 265 of 2015

Wednesday this the 31st day of May, 2017

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

EX-Hav Ninua Ram (Army No. 6482722P), Son of Duli Chand, Resident of Village – Jurhabai, Post - Jurhabai, District – Mathura – 281122, U.P.

..... **Applicant**

By Legal Practitioner: Shri PK Shukla, Learned counsel for the applicant.

Versus

1. Union of India through Secretary, Ministry of Defence, (Army) South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Director General, Personal Services, Adjutant General's Branch, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi-110011.
4. ASC Records (AT), PIN- 900493, C/O 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

By Legal Practitioner: Dr Shailendra Sharma Atal, Learned Standing Counsel for the Central Govt.

ORDER

"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, whereby the applicant has claimed disability pension and the benefit of rounding off.

2. The factual matrix of the case is that the applicant was enrolled in the Army on 15.09.1987 and was discharged from service on 30.09.2011 (Afternoon) under Rule 13 (3) Item III (i) of the Army Rules, 1954 in low medical category for three disease. Disability due to first disease DIABETES MELLITUS TYPE-II, E-11 is assessed as 20% for life, due to second disease PRIMARY HYPERTENSION I-10-0 is assessed as 30% for life and for third disease OBESITY, E-66 is assessed as 5% for life and composite disability has been assessed as 50% for life. Disability due to all three disease has been considered as neither attributable to nor aggravated by military service. The claim of disability pension of the applicant was rejected vide order dated 08.11.2012 and subsequently his first and second appeals were also rejected vide orders dated 31.03.2014 and 06.08.2015 respectively. Aggrieved, the applicant filed this instant Original Application.

3. Heard Shri PK Shukla, 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 since the applicant was enrolled in the Army in a fit medical condition after proper medical examination, therefore, the disability which has occurred to him is because of service conditions, as such, the disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. Learned counsel for the applicant also submitted that in catena of judgments, various Benches of Armed Forces Tribunals have granted disability pension in similar cases. He further submitted that the disability should be rounded off to 75%.

5. **Per contra**, learned counsel for the respondents submitted that since the applicant, was not fulfilling the primary conditions for grant of

disability pension as laid down in Para 173 of Pension Regulations for the Army, 1961 (Part –I), 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 is assessed at 20% or more. Therefore, disability pension of the applicant has correctly been rejected. However, 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 applicant is entitled to disability pension.

6. On the issue of attributability of disability 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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> *XXX XXX XXX*
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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:-*
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> *"(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".

XXX *XXX* *XXX*

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.

XXX *XXX* *XXX*

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. In **Sukhvinder Singh Vs. Union of India,** reported in (2014) STPL (WEB) 468 SC. the Hon'ble Apex Court on issue of disability 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"

8. In the instant case, the applicant has been denied disability pension because the Medical Board has considered the disability 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 applicant'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 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. Therefore, we are of the view that in terms of the judgment of the Hon'ble The Apex Court in the cases of **Dharamvir Singh (supra)** and **Sukhvinder Singh** (supra), since he was enrolled in fit medical condition and was discharged in low medical category, presumption has to be drawn in favour of the applicant and the disability is to be considered as attributable to and aggravated by military service and the applicant is entitled to disability pension.

9. On the issue of benefits of rounding off of disability pension, we recall the decision of Hon'ble The Apex Court in the case of **Union of India and others vs. Ram Avtar & others, Civil Appeal No. 418 of 2012 dated 10 December, 2014**, in which Hon'ble The Apex Court nodded in disapproval of 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. In view of Policy Letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and decision of Hon'ble The Apex Court in the case of **Ram Avtar** (supra), we are of the view that the applicant is entitled to the benefit of rounding off.

10. In view of the above, we are of the 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 aforesaid impugned orders deserve to be set aside and the applicant is entitled to disability pension @ 50% for life, which needs to be rounded off to 75%.

11. Thus in the result, the **Original Application No. 265 of 2015** is allowed and the impugned orders are set aside. The respondents are directed to grant disability pension to the applicant @ 50% for life which would stand rounded off to 75% for life from the date of discharge. The respondents are directed to pay disability pension alongwith arrears within four months from date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

Bhushan. 31.5.17

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated : 31st May 2017
RS/*