

Court No. 1 (List B)
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 62 of 2011

Friday this the 12th day of May, 2017

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

Ex -Naik Puran Chandra Bhatt (Army No. 14591120H) of EME, Son of Late Bhuvan Chandra Bhatt, resident of House No.C-2887, Rajajipuram, District- Lucknow (U.P.).

..... Applicant

By Legal Practitioner : Shri PN Chaturvedi,
Ld. Counsel for the applicant.

Vs.

1. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army) South Block, New Delhi- 110011.
2. Director General, Electrical and Mechanical Engineering, Integrated Headquarter of the Ministry of Defence(Army), Sena Bhawan, New Delhi- 110011.
3. Officer-In-Charge Records, EME Records, Secunderabad.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

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Respondents

By Legal Practitioner : Ms Deepti P Bajpai,
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 whereby he has claimed following reliefs :-

“(a) issue/pass an order or direction of appropriate nature to the respondents to quash/set aside EME Records Letter Noting Sheet No.14591120/DP-3/Pen dated 05.03.2008, rejection of first appeal by Integrated H.Q. of Ministry of Defence (Army) vide letter No.B/40502/332/2008/AG/PS-4 (Imp-II) dated 26.12.2008 and rejection of second appeal vide Government of India, Ministry of Defence Letter No.1(208)/2009/DPen)/Appeal) dated 25.03.2010 being perse illegal, arbitrary, capricious and against the provisions of law.

(b) issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the EME Records, Secunderabad letter - No.1451120/DP-3/Pen dated 28.04.2008 (Annexure No.A-1) holding the disability of the applicant neither attributable to nor aggravated by military service.

(c) issue/pass an order or direction of appropriate nature to the respondents to grant him 20% of disability pension as directed by the Release Medical Board.

(d) issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case;

(e) Allow this application with cost.

(f) Issue/pass an order or direction of appropriate nature to the respondents to round off 20% disability pension to the applicant to 50% disability as per Govt. of India Letter No.1(2)/97/ID (Pen-C) and established protection of law as held by Supreme Court.”

2. The factual matrix of the case is that the applicant was enrolled in the Army on 31st January 1986 and was discharged from service with effect from 31st March 2008 (Afternoon) under Rule 13 (3) III (i) of the Army Rules, 1954, for the disease “MEDULLO BLASTOMA (RT) CP ANGLE (OPTD)”. Medical Board held at the time of discharge



assessed his disability as 20% for life and considered it as neither attributable to nor aggravated by military service. The disability pension claim of the Applicant was forwarded to the competent authority but was rejected vide order 05.03.2008. Subsequently his First and Second Appeals were also rejected vide orders dated 26.12.2008 and 25.03.2010. Aggrieved the applicant has filed this Original Application.

3. Heard Shri PN Chaturvedi, Learned Counsel for the applicant, Mrs. Deepti P Bajpai, learned counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled in the Army on 31.01.1986. At the time of enrollment, he was found mentally and physically fit and no note of any medical discrepancy was recorded in his service documents. He was rendering his duty with total dedication and undiluted devotion but in the month of Feb 1997, when he was on temporary duty in the Eastern Theatre, he suffered from headache and stomach pain. He reported for medical checkup where he was diagnosed as suffering from **“MEDULLO BLASTOMA (RT) CP ANGLE (OPTD)”**, a neuro medical problem. He was treated for the same and was placed in medical category CEE (Permanent). On completion of his service in the rank of Naik, he was discharged from service on 31.01.2008 (afternoon). At the time of discharge he was subjected to Release Medical Board which assessed his disability as 20% for life and considered it as neither attributable to nor aggravated by military service. Ld. Counsel for the applicant submitted that the

applicant has suffered disease during military service only as at the time of enrolment, the applicant was considered medically and physically fit to join the Army. The disease has occurred to him due to stress and strain of 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 military service and he should be granted disability pension. He also submitted that the applicant is also entitled to benefit of rounding off of the disability pension as per policy letter dated 31.01.2001.

5. **Per contra**, Learned Counsel for the respondents submitted that as per policy, applicant's disability pension claim was preferred to the competent authority for adjudication but it was rejected. His first appeal was rejected and subsequently the second appeal was also rejected by the Appellate Committee observing that "*the Invaliding Disease (ID) Medullo Blastoma (Rt) CP Angle (Optd) was detected in Dec 1997. It is an embryonal tumor of the brain and has been graded IV as per World Health Organisation's grading system of Central Nervous System Tumors. Most commonly occur in childhood. It was not related to/affected by service.....*". Ld. Counsel for the respondents submitted that the applicant was retained in service for over ten years after the disease was diagnosed. He was discharged from service only on completion of his terms of engagement to enable him to get pension. Ld. Counsel for the respondents further submitted that Paragraph 173 of Pension Regulations 1961 (Part-1), 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. Since his disability was considered as neither attributable to nor aggravated by military service, it has been correctly denied to him. However, subsequently Ld. Counsel for the respondents 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. 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 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 invalidated 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).

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)].

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).



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. On the issue of grant of disability pension, we would also like to recall the judgment 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. In the instant case the applicant was enrolled in the Army on 31st January 1986 and was discharged from service with effect from 31st March 2008 (Afternoon) under Rule 13 (3) III (i) of the Army Rules, 1954, for the disease "**MEDULLO BLASTOMA (RT) CP ANGLE (OPTD)**". Medical Board held at the time of discharge assessed his disability as 20% for life and considered it as neither attributable to nor



aggravated by military service. The disability pension claim of the Applicant was forwarded to the competent authority but was rejected vide order 05.03.2008. Subsequently his First and Second Appeals were also rejected vide orders dated 26.12.2008 and 25.03.2010. We have given due consideration to the rival submissions made by Ld. Counsel for the parties and find that at the time of enrolment, the applicant was in sound physical and mental condition and was medically fit at the time he joined the Army. It is observed that at Page 5, para 2 of the Medical Board Proceedings, the Medical Board has opined that "2. Did the disability exist before entering service? (Y/N)/Could be)- Could be." and also the Appellate Committee in Second Appeal has opined that "the Invaliding Disease (ID) Medullo Blastoma (Rt) CP Angle (Optd) was detected in Dec 1997. It is an embryonal tumor of the brain and has been graded IV as per World Health Organisation's grading system of Central Nervous System Tumors. Most commonly occur in childhood. It was not related to/affected by service....." From pleadings and perusal of documents, it clearly comes out that at the time of enrolment, he was in a medically fit condition and the disease was detected only in December 1997 when he had served for approximately 10 years. The respondents have not been able to produce any document to prove that the disease existed prior to enrolment and there is no such entry in the service record and even the Medical Board held in 2007 has not categorically stated that this disease existed before his enrolment. Therefore, the applicant is entitled for presumption and benefit of presumption in his favour. We are of the view that in terms of judgement of Hon'ble The Apex Court in the




cases of **Dharamvir Singh** (Supra) and **Sukhvinder Singh** (supra), he is entitled benefits of disability pension.


9. As regards entitlement of rounding off of disability pension, we are of the considered view that the case of the applicant for rounding off of disability pension is covered by the decision of **Hon'ble The Apex Court in the case of Union of India and Ors vs Ram Avtar & ors in Civil Appeal No 418 of 2012 dated 10th December 2014**. Accordingly, 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 not in conformity with Rules, Regulations and Law. The impugned orders deserve to be set aside and the applicant is entitled to disability pension @ 20% for life, which needs to be rounded off to 50% in accordance with the decisions of Hon'ble The Apex Court Judgement in the case of Ram Avtar (supra).
11. Thus in the result, **Original Application No. 62 of 2011** succeeds and is allowed. The impugned orders dated 05.03.2008, 26.12.2008 and 25.03.2010 are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life from the date of discharge, which would stand rounded off to 50% for life. The respondents are directed to give effect of this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the 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.


12.5.17
(Lt Gen Gyan Bhushan)
Member (A)


Dated : May 12, 2017
PKG


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