

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved.
(Circuit Bench at Jabalpur.)

Original Application No. 136 of 2012

Thursday the 14th day of May, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

No. 4265368Y, Ex Sepoy, Dhan Raj S/O Late Shri Sukhdeo aged about 47 years, R/O Village Satner, P.O. Satner, District – Betul (M.P.) .

..... Applicant.

By Shri K.C. Ghildyal, counsel for the applicant.

Versus

1. Union of India through, the Secretary, Ministry of Defence, Government of India, New Delhi.

2. Chief of Army Staff , Army Headquarters, DHQ, Post Office – New Delhi.

3. The Officer-in-Charge Bihar Regiment, Danapur Cantt, (BIHAR)

4. The Chief Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

..... Respondents.

By Shri D.K. Pandey, along with Capt. Manisha Yadav, Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant seeking the following reliefs:-

“(i) The Hon’ble Tribunal may be pleased to quash the order dated 22/11/1996 (Annexure-A/1) and dated 10/05/2006 (Annexure-A/2) issued by respondent No. 3 intimation decision of respondent No. 4.

(ii) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension to the applicant w.e.f. 06/02/1996 along with its arrears with interest at the rate of 18 percent per annum.

(iii) The Hon'ble Tribunal may be pleased to direct the respondents to correct service record of the applicant and include the name of his wife Smt Lata Manohare and son Kanan in his service record.

(iv) Any other appropriate writ, order or direction which the Hon'ble court may deem just and proper in the nature and circumstances of the case."

2. The facts of the case, in brief, are that the applicant was enrolled on 29.1.1985 and was posted to 6 BIHAR. In September 1999 he was admitted in hospital with disease which was diagnosed by the Command Hospital, Western Command, as Neurosis (Hysteria) 300b. Owing to this disease he was considered to be a liability for the Army in view of his poor medical health and the medical authorities recommended his invalidating out of service in medical category EEE (Psychological). Consequently, he was invalidated out of service vide report of Invaliding Medical Board held on 24.11.1990. Thereafter the applicant was finally discharged from service on 3.3.1991. The Release Medical Board assessed his disability less than 20% and, therefore, his claim for disability pension was rejected.

3. On appeal, however, PCDA(P), Allahabad, granted disability pension to the applicant comprising service element of Rs. 375/- for life and disability element of Rs. 90/- with effect from 4.3.1991 to 5.2.1996. As per the recommendation of VIth Pay Commission the service element now is minimum Rs.3,500/- per month plus Dearness Allowance with effect from 1.1.2006. The applicant was brought before the Re-survey Medical Board

on 20.1.1996. The Re-survey Medical Board assessed the disability of the applicant to be 6 to 10% for 10 years and, consequently, PCDA, vide letter dated 31.10.1996, discontinued the disability element. However, the service element continued to be paid. Another Re-survey Medical Board was held on 13.4.2006 which assessed the disability of the applicant to be 6 to 10% for life. Based on the assessment of Re-survey Medical Board, once again the PCDA rejected the claim for disability element.

4. The applicant, through his counsel, states the fact mentioned above. He states that he was prematurely discharged from service after serving for nearly five years and no pension was granted to him. He prayed that since he was discharged on medical ground, the disability pension be granted to him. The applicant also prayed that the names of his wife and son be directed to be entered in his personal record.

5. The respondents mentioned the facts and stated that disability was not granted to him since it was less than 20% under the provisions of Para 173 of the Pension Regulations for the Army, 1996. The respondents, on the issue of recording the names of the wife and son, state that the names of his wife and daughter have already been notified in Part II order, whereas the name of his son has not been notified and they have asked the petitioner to forward three documents, viz. affidavit from a 1st class Magistrate mentioning therein the name, date of birth and place of birth of the son of the applicant, birth certificate of the son from Gram Panchayat/Registrar (Birth & Death) and of civil education certificate of his son. It has, therefore, been submitted that since the aforesaid documents, so claimed, have not been forwarded by the applicant, hence the name of his son has not been entered in the Record.

6. Heard both the sides and examined the documents.

7. Para 173 of the Pension Regulations for the Army, 1961 lays down three conditions for grant of disability pension, viz. disability should be attributable to service and/or aggravated by service and the disability should be over 20%. Accordingly, the pension authorities have initially not granted him disability pension. However, on appeal from the applicant, PPO No. 415/92 dated 12.10.1992 was issued which grants the service element of pension with effect from 4.3.1991 for life at Rs. 375/- per month and disability element of Rs. 90/- per month from 4.3.1991 to 5.6.1996. Further since RSMB in 1996 assessed the disability to be less than 20%, the claim for disability pension was rejected by the PCDA both in 1996 and 2006.

8. To cut short the controversy, it is relevant to refer the judgment and order, passed by the Hon'ble Supreme Court in the case of **Sukhvinder Singh v. Union of India & others** reported in *2014 Legal Eagle (SC) 546*. The relevant paragraph from the aforementioned judgment of the Hon'ble Supreme Court is quoted hereunder :

"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, here appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent 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 per cent disability pension".

9. In view of above, the issue needs no further clarification. The applicant was invalidated out of service and, therefore, his disability is to be considered above 20% and, consequently, he is entitled to disability pension.

10. Further in accordance with para 7.2 of Government of India, Ministry of Defence, letter No. 1 (2) / 97 / 1 / D (Pen – C) dated 31.1.2001 the disability of less than 50% is to be rounded of to 50%. Accordingly, the applicant is entitled to 50% disability pension with effect from 6.2.1996 for life.

11. Accordingly, this Original Application is allowed. The respondents are directed to pay disability pension at the rate of 50% to the applicant for life with effect from 6.2.1996. The arrears will be calculated and paid to the applicant within three months from the date of service of a certified copy of this order. There will be no order as to costs.

12. As regards endorsement of the names of the wife and son of the applicant in the Record is concerned, it has already comes out that the names of the wife and daughter of the applicant have already been notified in Part II order, but for entering the name of his son, the applicant is directed to provide the respondents the relevant/required documents to the Records of BIHAR Regiment within a period of one month from today and the Record is directed to endorse the name of the son of the applicant on Record on being satisfied with the documents so to be provided by the applicant.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

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