

RESERVED

A.F.R.

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 2

O.A. No. 430 of 2012

Thursday, the 15th day of May, 2014

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt. Gen. Gyan Bhushan, Administrative Member”**

JC-158380K Ex. Sub. Mishri Singh, aged about 58 years
Son of Shri Mokhi Singh resident of House No. 26D
Senani Vihar, Rai Bareilly Road, Lucknow

.....Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff Integrated Headquarters of Ministry of Defence South Block, New Delhi-110001
3. Officer-in-Charge Records, Rajput Regimental Centre Fatehgarh Centre (UP)-209601
4. Principal Controller of Defence Accounts (Pension) Draupdi Ghat, Allahabad

....Respondents

Ld. Counsel appeared for the applicant - Shri V.P. Pandey, Advocate

**Ld. Counsel appeared for the respondents - Shri A K Srivastava
Central Government Counsel**

ORDER**“Per Justice Virendra Kumar DIXIT, Judicial Member”**

1. This Original Applicant has been filed under section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has claimed following reliefs :-

(a) To issue an order or direction to the Respondents to set aside/quash the rejection order of disability pension as contained in Annexure A-1.

(b) To issue an order or direction to the Respondents to pay the disability pension to the applicant since the date of discharged from service i.e. 31.01.2001.

(c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(d) Cost of the application be awarded to the applicant.

2. The applicant was enrolled in the Army on 09.03.1974 and was discharged from service on 01.02.2001 under Army Rule 13 (3) I (iii) (a) before completion of his terms of engagement in low medical category BEE (Hearing) Permanent due to disability “Bilateral Sensori Neural Deafness-389”.

3. The applicant felt loss of hearing for the first time in the year 1989 after 15 years of service due to exposure to RCL Firing. The applicant was admitted in 174 Military Hospital on 05.07.1992 with complaint of deafness in right ear due to exposure of RCL firing. He was diagnosed a case of ‘Sensori Neural Deafness (Bilateral)’ and

placed in low medical category till 18.02.2000. Since the applicant was not given sheltered appointment for further retention in service due to its non availability as per policy of Integrated Headquarters of Ministry of Defence (Army), the applicant was brought before Release Medical Board on 02.11.2000 and was discharged from service with effect from 01.02.2001 with 20% disability for five years. His claim for disability pension was sent to PCDA (P) Allahabad for adjudication but it was rejected on the ground that disability for which the applicant was released from service was neither attributable to nor aggravated by military service. Being aggrieved, the applicant filed this Writ Petition.

4. Heard Shri **V. P Pandey**, Ld. Counsel for the applicant and Shri **Ashutosh Kumar Srivastava**, Ld. Central Government Counsel at length and perused the relevant documents available on record.

5. Ld. Counsel for the applicant submitted that the applicant suffered from loss of hearing in the year 1989 due to exposure to RCL Firing for the first time after having completed his 15 years of colour service. He came under medical attention in July 1992 when the disease started developing. First he was given treatment at 174 Military Hospital and then by various Military Hospitals. On 19.02.2000, the applicant was admitted in 178 Base Hospital for his Medical Re-categorisation Board. The Graded Specialist (ENT) opined that hearing level of the applicant has worsened and advised that he should not be employed in duties involving keen hearing activity and also not to be exposed to loud sounds. He was discharged from the hospital on 07.03.2000 with Low Medical Category CEE (Permanent).

The applicant's request for grant of sheltered appointment was turned down by the Commanding Officer. Consequently the applicant was brought before Release Medical Board on 02.11.2000 at 164 Military Hospital and was recommended to be released in Medical Category CEE (Hearing) Permanent. The applicant was discharged from service with effect from 01.02.2001. The disability of the applicant was assessed at 20% for five years and the claim for disability pension was sent to PCDA (P) Allahabad for adjudication but it was rejected on the ground that disability was neither attributable to nor aggravated by military service.

6. He further submitted that the applicant has served in the Army (Rajput Regiment- an Infantry Unit) for 26 years, 8 months and 22 days. The action/inaction of Respondents No. 3 and 4 is clear indication that mighty state can be arbitrary and illegal against a common man and particularly to a soldier of Infantry who has given his youth in the service of the nation putting his life at stake, serving day and night on various inhospitable places and facing the fury of all kind of inclement weathers.

7. Ld. Counsel for the applicant submitted that at the time of entry into service, the applicant had no such complaints and as such as per rule the disease ought to be taken as attributable to service. In support of his contention, learned counsel for the applicant has relied upon the law laid down by Hon'ble the Apex Court, in the case of Dharamvir Singh Vs Union of India and others reported in (2013) 7 Supreme Court Cases Page 316 in which it was held that if an individual is invalided out of service on account of disability and the medical

documents do not contain the fact that the disability could have existed prior to his entry into the service but could not have been detected due to the reasons mentioned therein, the disability is liable to be considered as Attributable to Service. In view of the above, Ld. Counsel for the applicant has further submitted that at the time of enrolment in military service, the disease "Bilateral Sensori Neural Defness-389" was not noticed by the Medical Authorities of the respondents and, therefore, the disability is to be treated as attributable to, and aggravated by military service.

8. Learned counsel for the applicant submitted that the claim of the applicant for disability pension was rejected in a most arbitrary, illegal and malafide manner without any authority and submitted that the applicant be allowed 20% disability pension for life from the date of discharge from service.

9. On the other hand, Learned counsel for the respondents submitted that as per provisions of Rule 173 of Pension Regulation for the Army 1961 (Part I), the disability pension is payable to an individual whose disability is assessed either attributable to or aggravated by military service and is assessed at 20% or more by the medical authority. Since the disability of the applicant was regarded neither attributable to, nor aggravated by military service by Release Medical Board, he was not granted disability pension.

10. Ld. Counsel for the respondents further submitted that since the disease "**Bilateral Sensori Neural Deafness-389**" was neither attributable to nor aggravated by military service as held by Release

Medical Board, the claim for disability pension of the applicant is not in order. He also submitted that as per records held with Rajput Regiment Records, the applicant while serving with 3 Rajput, when the unit was deployed in High Altitude Uncongenial Climate Area (J&K), was admitted in 174 Military Hospital on 05.07.1992 with the complaint of deafness in right ear. The applicant was medically examined by Graded Specialist (ENT Surgeon) and diagnosed as a case of Sensori Neural Deafness (Bilateral) probably due to acoustic trauma and recommended to be placed in Low Medical Category BEE (Temporary) with effect from 01.08.1992 He was placed in Low Medical Category CEE (Permanent) with effect from 18.02.2000. As per policy laid down in Integrated HQ of MOD (Army) letter No B/10122/LMC/Org 2 (MP) (C) dated 23.09.1998 read with Army Order 46 of 1980 as was applicable at that time, every individual who was placed in low medical category (Permanent) was required to exercise an option for retention in service in low medical category in public interest. Accordingly the applicant exercised his option to continue in service in low medical category CEE (Permanent), but Commanding Officer 3 Rajput did not give him sheltered appointment in terms of Integrated HQ of MOD (Army) letter No B/18122/LMC/PM-3(PBOR) dated 15.03.2000 to avoid holding of surplus manpower beyond the sanctioned strength of the Regiment. Therefore, he was brought before Release Medical Board held at 164 Military Hospital on 02.11.2000 and was discharged from service with effect from 01.02.2001.

11. Ld counsel for the respondents argued that claim for disability pension submitted to PCDA (P) Allahabad was rightly rejected due to policy constraints. Therefore, the plea of the applicant is not sustainable in the eyes of law and be dismissed being devoid of merit and lacking substance.

12. We have perused documents and heard arguments of both the Ld. Counsels.

13. In the instant case the applicant had put in 26 years, 8 months and 22 days service in the Army. He was discharged from service on 01.02.2001 in Low Medical Category CEE (Permanent) due to disease "BILATERAL SENSORI NEURAC HEARING LOSS". The Release Medical Board had recommended the disability of the applicant at 20% for five years but it was considered neither attributable to nor aggravated by military service. Based on this report, no disability pension was granted to the applicant. Accordingly the representations of the applicant were rejected by the respondents.

14. Relevant portion of the orders and policies on the subject are as follows:-

(a) **Pension Regulation for the Army 1961 (Part I)**

Para 173. Primary conditions for the grant of disability pension - 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.

15. In the case of Dharamvir Singh Vs. Union of India and others reported in (2013) 7 Supreme Court Cases 316, in paras 29.6, 29.7, 30, 31, 33 and 34 of the judgement, the observations made by Hon'ble the Apex Court are 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 been 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 (Military Pension), 2002 -"Entitlement : General Principles", including paragraphs 7,8 and 9 as referred to above (para 27).*

30. *We, accordingly, answers both the questions in affirmative in favour of the appellant and against the respondents.*

31. *In the present case it is undisputed that no note of any disease has been recorded at the time of 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

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 ‘Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In 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.

34. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of disability of death resulting from disease is or is not attributable to service. It is immaterial whether the cause giving rise to disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. Therefore, the presumption would be that the disability of the appellant bore a

causal connection with the service conditions. Thus, the appellant in present case is entitled for disability pension”

16. In the case of Veer Pal Singh vs. Ministry of Defence reported in (2013) 8 SCC 83 in paras 11,12,13,17,18 and 19 of the judgement, 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.

17. In the instant case, the Medical Board has expressed its opinion that the disease is not attributable to, or aggravated by Military Service but the respondents have 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 applicant at the time of acceptance for Military service. Without going through the aforesaid facts the Pension Sanctioning Authority in mechanical way passed the impugned order based on the report of the Medical Board. In absence of any evidence on record to show that the applicant was suffering from “BILATERAL SENSORI NEURAL DEAFNESS-389)” at the time of acceptance of his service and the fact that the applicant had put in over 15 years of service when for the first time the applicant felt the loss of hearing, it will 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.

18. In view of the law laid down by the Hon'ble The Apex Court in the cases of **Dharamvir Singh** (Supra) and **Veer Pal Singh** (Supra), in the instant case admittedly the applicant at the time of joining the Army Service was in sound physical and mental condition as no note of any disability or disease was made at the time of applicant's acceptance for Army Service. Further, the applicant had put in more than 15 years of service, when he was affected with the disease; hence opinion of the

Release Medical Board that the disease is not attributable to or aggravated by Military Service is not at all justified.

19. In view of the above, we are of the considered view that the impugned order passed by the respondents was not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned order dated 05.12.2002 (Annexure A-1 to O.A.) deserves to be set aside and the applicant is entitled to disability pension @ 20% from the date of discharge for five years as recommended by the Release Medical Board alongwith interest at the rate of 6% per annum. We are also of the view that, in view of law laid down by the Hon'ble Apex Court in the case of Veer Pal Singh (Supra), in the interest of justice the case of the applicant be referred to the Review Medical Board for re-assessing the medical condition of the applicant for further entitlement of disability pension, if any.

20. Thus in the result, the O.A. succeeds and is allowed. The impugned order dated 05.12.2002 passed by the Respondents is set aside. The applicant is entitled for Disability Pension @ 20% for five years from the date of discharge as recommended by Release Medical Board. The Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 6% per annum. We also direct the Respondents to refer the case to the Review Medical Board for reassessing the medical condition of the applicant for further

entitlement of disability pension, if any. The Respondents are further directed to comply the order within three months from the date of production of a certified copy of this order.

21. No order as to costs.

**(Lt Gen Gyan Bhushan)
Administrative Member**

**(Justice Virendra Kumar DIXIT)
Judicial Member**

Date : May , 2014

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