

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO 1****O.A. No. 84 of 2014****Wednesday, this the 4th day of November, 2015****"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon'ble Lt Gen Gyan Bhushan, Administrative Member"**

No. 14828087A Praveen Kumar Singh (Ex. Sep), son of Sri R.N.Singh, aged about 32 years, permanent Address:- Village: Sarahula, P/S Dildarnagar, District- Ghazipur, (U.P.)-232326, presently resided at House No. 291 B, Jayantipur, Sulem Sarain (Nyay Vihar) Phase-II, Post & PS-Dhumanganj, Allahabad (U.P.), PIN-211001.

-Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K.Puram, New Delhi.
2. D (Pen. A & AC), Government of India, Ministry of Defence, Sena Bhawan, New Delhi-110105.
3. Addl Dte Gen Personnel Service, Adjutant General's Branch, Integrated HQ of MOD (Army) DHQ PO: New Delhi-110011.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P).
5. OIC, ASC Records (South) Records, Bangalore-560007.

....Respondents

**Ld. Counsel appeared for the Applicant -Shri V.K.Pandey,
Advocate**

**Ld. Counsel appeared for the Respondent -Shri D.S.Tiwari,
Central Government
Counsel**

ORDER**"Per Hon'ble Mr. Justice Virendra Kumar DIXIT Judicial Member"**

1. Present Original Application has been filed on behalf of the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the following reliefs-

- (i) *That this Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 13.03.2008, 21.11.2006 & 23.07.2004 passed by the opposite party no. 2,3 & 4 as contained in Annexure No.1,2 and 3 to this Original Application.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension to the Applicant from the due date to actual date of payment i.e. 3.6.03 also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the Applicant.*
- (iv) *That this Hon'ble Tribunal may be pleased to award the cost of this original application and legal expenses Rs 5,000/- five thousand) and allow the same."*

2. The admitted and uncontroverted facts are that the Applicant was enrolled in the Indian Army on 21.10.2001 and was discharged from the Army on 03.06.2003 on account of disability stemming from his ailment which was diagnosed as "SCHIZOPHRENIA F20"" and his disability was assessed at 40% for life-long. The Invaliding Medical Board was held on 03.06.2003 and the medical authorities ascribed his disability as

constitutional disorder unrelated to service conditions. To rephrase it, the Medical Board opined that the disease of the Applicant was neither attributable to nor aggravated by military service. His claim for disability pension was rejected by the PCDA (P) Allahabad by means of order/letter dated 23.07.2004 on the ground that the Applicant did not fulfill the primary conditions for grant of disability pension as per Para 173 of Pension Regulations for Army 1961 (Part-1). Against the said order, the Applicant preferred Appeal which was rejected by means of order/letter dated 21.11.2006. Thereafter, the Applicant preferred second appeal which also stood rejected vide order/letter dated 13.03.2008.

3. It may be noticed here that the Learned Counsel for the Respondents had raised objection having complexion of preliminary objection that the Applicant having been discharged from the service in the year 2003 and his second appeal having been rejected in the year 2008, no cogent or convincing reasons have been assigned for condonation of delay and prayed the petition to be dismissed on this ground alone.

4. In connection with the above, we have examined the materials on record. It is explained by Learned Counsel for the Applicant that while his second appeal was lingering, the Applicant filed an Application under the RTI Act, 2005 before the Respondents seeking to make available the medical documents which query was replied to by the Respondents on 19.09.2013, 01.10.2013 and 4.10.2013. He further explained that in the

meanwhile, his father fell seriously ill which entailed huge expenses leaving the Petitioner under financial constraints.

5. In the light of the above explanation, we are convinced that the delay has been fully explained by the Petitioner and the contention of the Learned Counsel for the Respondents does not commend to us for acceptance. The delay if any, stands condoned in terms of the above discussion.

6. Coming to the merits of the case, we have heard Learned Counsel for the Applicant as also Learned Counsel for the Respondents at prolix length.

7. The bottom-line of the submissions of the Learned Counsel for the Applicant is that since he was in good medical health at the time of recruitment in service, the stand of the Respondents premised on medical opinion that the disability of the Applicant was neither attributable to nor aggravated by the Military Service cannot be countenanced in view of settled position of law contained in various decisions of Hon'ble The Apex Court. The Learned Counsel further submitted that the Respondents while denying benefit of disability pension, have not adverted to Entitlement Rules for Casualty Pensionary Awards of 1982 (earlier of 1962) according to which the Applicant's disability was to be presumed and deemed to be attributable to Military service unless there was rebuttal of the same in terms of Rule 9 of the Entitlement Rules for Casualty Pensionary Awards. The Learned

Counsel further submits that the opinion of the Medical Board cannot be sustained as it is not propped up by reasoned opinion.

8. **Per contra**, Learned Counsel for the Respondents submitted that the Applicant was admitted to the Hospital for the first time on 01.03.2003 and he was examined by the Invaliding Medical Board at Military Hospital on 03.06.2003 which converged to the opinion that the Applicant's disability was neither attributable to nor aggravated by military service, it being constitutional disorder unrelated to service conditions. The matter then came to be considered by the PCDA (Pension) Allahabad, which after scrutiny rejected the claim for disability pension vide letter dated 23.07.2004, reasoning that the Applicant had not fulfilled the primary conditions for grant of disability pension as per Para 173 of the Pension Regulations for Army 1961 (Part I). The submission quintessentially is that since the Medical Board is an Expert body, due weight, value and credence should be given to its opinion and it is not open to the Tribunal to interfere with the medical opinion of the Board

9. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portions of the Pension Regulations for the Army 1961 (Part I), Chapter IV of Entitlement Rules 1982 and the provisions of Rules 5, 9, 14(b) and 20 of the Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

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

Para 173. "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.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

(b) **Chapter IV – Entitlement Rules****Entitlement Rules for Casualty Pensionary Awards, 1982**

Rule 5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions :-

Prior to and during service

(a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*

(b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

(c) **Entitlement Rules for Casualty Pension Award, 1982**

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

Prior to and During Service.

(a) *A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*

(b) *In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.*

Onus of Proof.

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will be given more liberally to the claimants in field/afloat service cases.

Disease

14. In respect of diseases, the following rule will be observed:-

(a) cases.....

(b) a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

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22. **Conditions of unknown aetiology:-** There are a number of medical conditions which are unknown aetiology. In dealing with such conditions, the following guiding principles are laid down-

(a) *If nothing at all is known about the cause of the disease, and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded.*

(b) *if the disease is one which arises and progresses independently of service environmental factors than the claim may be rejected."*

10. The first decision, we would like to refer to on the point is the case of **Dharmvir Singh Vs. Union of India & others (2013) 7SCC 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 Pension), 2002 -"Entitlement : General Principles", including paragraphs 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."

11. In **Sukhvinder Singh Vs. Union of India (2014) STPL (WEF) 468 SC**, the Hon'ble 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. Thirdly, there 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 per cent. 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."

12. On the question whether the disability is attributable to or aggravated by Military service, we feel called to refer to the decision of the Apex Court in **Union of India vs. Rajbir Singh**, (2009) 9 SCC 140, Hon'ble The Apex Court considered all the above decisions and observed as under:

"16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be

presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20% their claim to disability pension could not have been repudiated by the appellants."

13. On the point is also the decision of Hon'ble Apex Court rendered in **Veer Pal Singh vs. Ministry of Defence reported in (2013) 8 SCC 83** in paras 11,12,13,17,18 and 19 of the judgment, 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 Mr. 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.

14. Having given anxious considerations to the rival submissions made on behalf of the Learned Counsel for the parties, we find that the Applicant had been enrolled in the Indian Army in a fit medical condition and there being nothing on record to suggest that the Applicant was under treatment for such a disease or by hereditary he is suffering from such disease, the opinion of the Medical Board that the nature of ailment of the Applicant was constitutional unrelated to the service does not commend to us for acceptance and therefore, in view of the judgment of the Hon'ble Apex Court in the case of **Dharmvir Singh, Sukhvinder Singh and Union of India Vs Rajbir Singh** (supra), a presumption has to be drawn in favour of the Applicant, who is discharged in low medical category. It is also made clear in the judgments of Hon'ble Apex Court (supra) that the Applicant cannot be called upon to prove his claim for the disability pension once he was enrolled in fit medical conditions in the service and was discharged in low medical category. All issues have now been settled, which are applicable or may be raised by the respondents in this case, by the Hon'ble Apex Court referred to above.

15. In this case, no reasoned opinion has been given by the Medical Board, on the basis of which the Medical Board concluded that the Applicant's disease is neither attributable to nor aggravated by the service conditions. Mere conclusion without reasons is not a

valid medical opinion. There is no note of such disease or disability in the service record of the Applicant at the time of acceptance in service. In absence of any evidence on record to show that the Applicant was suffering from disability or any ailment at the time of his acceptance in service, it will be presumed that he was in sound physical and mental condition at the time of entering service and deterioration of his health has taken place due to service. Therefore, the medical opinion cannot be accepted and the Applicant is entitled to the relief as per the above judgments of the Hon'ble Apex Court.

16. In the conspectus of the facts, circumstances and the law laid down by Hon'ble The Apex Court in the cases of **Dharmvir Singh, Sukhvinder Singh and Union of India Vs Rajbir Singh** (supra), we are of the considered view that the impugned orders dated 13.03.2008, 21.11.2006 and 23.07.2004 passed by the Respondents were not only unjust, illegal but also not in conformity with rules, regulations and law 13.03.2008, 21.11.2006 and 23.07.2004 deserve to be set aside.

17. As a result of foregoing discussion, the impugned order passed by the Respondents thus deserves to be set aside and the Applicant is held entitled to disability pension @40% for lifelong from the date of discharge as recommended by the Medical Board which would be rounded off to 50% in terms of the decision of the Apex Court in **Sukhvinder Singh** (supra), the substance of which is "*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*" and also considering the principles laid down by Hon'ble The Apex Court in **Union of India vs Ram Avtar (supra)**, and also in **Union of India**

and Ors vs. Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014) with interest at the rate of 9% per annum.

Order

18. Thus in the result, the Original Application succeeds and is allowed. The impugned orders dated 13.03.2008, 21.11.2006 and 23.07.2004 passed by the Respondents are set aside. The Applicant is entitled for disability pension @ 40% for life-long from the date of discharge as recommended by the Medical Board which would stand rounded off to 50% in terms of the decisions of Hon'ble The Apex Court in **Sukhvinder Singh** (supra) and also in **Union of India and Ors vs. Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014**. He shall also be entitled for interest @9% per annum on arrears of aforesaid disability pension from the date of discharge till the date of actual payment. The Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum. The above order shall be levied in implementation within three months from the date of receipt of a certified copy of this order.

19. There will be no orders as to costs.

(Lt Gen Gyan Bhushan)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

Dated : November ,2015

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