

RESERVED

A.F.R.

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A. No. 840 of 2010

Friday, the 16th of May, 2014

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

Som Shekhar Shukla S/o Shri B.P. Shukla
Vill & P.O. – Kanouja, Dist – Rewa (MP)

.....Applicant

Versus

1. Govt, of India, through Secretary Ministry of Defence,
New Delhi.
2. Controller of Defence Accounts (Pension), Allahabad (UP).
3. Officer-in-Charge Records, Air Force, New Delhi

....Respondents

**Ld. Counsel appeared for the applicant - Shri Yashpal Singh,
Advocate**

**Ld. Counsel appeared for the respondents - Shri D.K. Pandey
Central Govt. Counsel**

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

1 This matter has come before us from High Court of Madhya Pradesh at Jabalpur by way of transfer under Section 34 of the Armed Forces Tribunal Act, 2007 and has been renumbered as Transferred Application No 840 of 2010.

2. The applicant through this Transferred Application has prayed as under :-

(a) To issue a direction to the respondents to take final decision regarding payment of disability pension to the petitioner and to make payment of the same alongwith interest.

(b) Set aside the orders dated 25.09.1979, 10.03.1981 and 14.09.1983 passed by Officer-in-Charge, Air Force Records, Govt. of India, Ministry of Defence, New Delhi and Defence Ministers Appellate Committee on Pension, New Delhi, respectively (as contained in Annexure Nos. P-1, P-3 and P-9 to the Transferred Application.

3. The factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 02.01.1965 in medical category 'AYE' vide primary medical examination carried out by recruiting medical officer on 01.12.1964 and discharged from service with effect from 01.02.1997 after rendering 32 years and 30 days service in the Air Force in Medical Category BEE (Permanent) for the disease '**HASHI TOXICOSIS**'. The percentage of disability was granted 30% for two years but it was considered as neither attributable to, nor aggravated by service. Applicant's claim for

disability pension was forwarded to the office of the PCDA (P) Allahabad but the same was rejected being not attributable to nor aggravated by Air Force service. The applicant's first appeal was also rejected by Government of India, Ministry of Defence on 28.10.2000. The applicant filed Second Appeal on 22.05.2005 and this was ultimately resulted into a letter from the Government of India, Ministry of Defence dated 29.09.2005 that the applicant should be brought before the Appeal Medical Board (AMB). AMB was carried out at Base Hospital, Delhi Cantt on 03.04.2006 and he was granted disability pension @ 30% for life with effect from 03.04.2006 and not from the date of discharge i.e, 01.02.1997. Being aggrieved, the applicant filed this Writ Petition.

4. Heard Shri **P.N. Chaturvedi**, Ld. Counsel for the applicant and Shri **D.S. Tiwari**, Ld. Central Government Counsel at length and perused the relevant documents available on record.

5. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Air Force on 01.01.1965. At the time of enrolment he is was found medically fit as no disease was detected at the time of his enrolment. Due to stress and strain of service he fell ill in February 1994 and reported to medical authorities for the treatment. He was diagnosed to have the disease 'Hypertension and obesity' and his medical category was downgraded to CEE (Temporary) . In May 1994 he was referred to INHS Ashwini at Mumbai and his medical category was downgraded to Category BEE (T-24). The disease was diagnosed as "**HASHI TOXICOSIS**" Finally when the applicant

was discharged from service with effect from 01.02.1997 he was placed in medical category BEE (Permanent) for the disease '**HASHI TOXICOSIS**' with 30% disability pension for two years. The claim for disability pension was submitted to PCDA (P) Allahabad but it was rejected on the ground that disability was neither attributable to nor aggravated by the Air Force Service. The first appeal of the applicant was also rejected by Govt. of India, Min. of Def. on the same ground. On second appeal, Govt. of India, Min. of Def directed the medical authorities to carry out AMB which was done at Base Hospital New Delhi and the applicant was sanctioned 30% disability for life from 03.04.2006 (the date of AMB) and not from the date of discharge i.e., 01.02.1997.

6. Ld. Counsel for the applicant submitted that as per the provisions on pensionary benefits in general and disability pension in particular the applicant was entitled for disability pension as assessed by the Release Medical Board from the date of discharge i.e. 01.02.1997. The respondent No. 1 had committed the fundamental mistake that the disability pension is entitled to an Air Force personnel from the date of his discharge after having the proper Release Medical Board and not from the date when the Appeal Medical Board was held. For non-approval of his deserved and entitled disability pension the applicant cannot be faulted with and he cannot be allowed to suffer for the mistakes committed earlier by improper diagnosis by the medical authorities and not granting him disability pension when it was due to him which indicates that in case of the applicant he has

been discriminated by non-grant of disability pension with effect from 01.02.1997 and thus this indicates that there is perceptible violation of Article 14 of the Constitution of India. The Ld. Counsel for the applicant emphasized that the applicant is entitled to the equal protection of law and he cannot be discriminated. Besides this, the Regulation 153 of the Pension Regulations for the Air Force, 1961 and Regulation 158 of the said Regulations clearly provide that Air Force Personnel would be entitled for the disability pension with effect the date of his discharge.

9. Learned counsel for the applicant submitted that grant of disability pension from the date of AMB and not from the date of discharge is arbitrary, illegal, malafide and without any authority. He submitted that the applicant be given 30% disability pension for life from the date of discharge i.e. 01.02.1997 and not from the date of AMB i.e. 03.04.2006.

10. On the other hand, Learned counsel for the respondents submitted that the applicant was released from service in low medical category BEE (P) for disability "HASHI TOXICOSIS". The Release Medical Board awarded 30% disability to the applicant but it was considered as neither attributable to, nor aggravated by Air Force service. Based on this, PCDA (P) Allahabad and Govt. of India, Min. of Def. in first appeal rejected the disability pension claim of the applicant. However, on his second appeal, Govt. of India, Min. of Def ordered for Appeal Medical Board which was done at Base Hospital New Delhi and

the applicant was awarded 30% disability for life from the date of AMB ie, 03.04.2006. Accordingly, applicant has been given disability pension from 03.04.2006.

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

13. In the instant case the applicant was enrolled in the Air Force on 02.01.1965 and was discharged on 01.02.1997 on completion of 32 years and 30 days service in Low Medical Category B (Permanent). At the time of enrolment in the Air Force he was found medically fit. During Air Force service only he got infected with the disease "**HASHI TOXICOSIS**".

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

(a) **Pension Regulation for the Air Force 1961 (Part I)**

Para 153. *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.*

"Disability pension is granted to officers and personnel below officer rank who are invalided out of service on account of causes which are accepted as attributable to or aggravated by service, irrespective of their length of service and provided that degree of disablement is assessed at 20% or more. The disability pension consists of two elements.

Service element *which depends on the length of service and rank.*

Disability element *which depends on percentage of disablement in the case of officers and also rank in case of personnel below officer rank. In case disability falls below 20% after grant of disability pension, **the service element of disability pension is permanent**".*

17.

20. Thus in the result, the O.A. succeeds and is allowed. The impugned orders 25.09.1979, 10.03.1981 and 14.09.1983 passed by the Respondents are set aside. The applicant is entitled to Disability Pension @ 40% for two 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. 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

dds/

15. In the case of Dharamvir Singh Vs. Union of India and Ors 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.*

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 Air Force 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 Air Force Service. Further, the applicant had put in more than 2 years of service, when he was affected with the disease; hence opinion of the Medical Board that the disease is not attributable to or aggravated by Air Force Service is not at all justified.

19. In view of the above, we are of the considered view that the impugned orders dated 25.09.1979, 10.03.1981 and 14.09.1983 passed by the respondents were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders dated 25.09.1979, 10.03.1981 and 14.09.1983 deserves to be set aside and the applicant is entitled to disability pension @ 40% from the date of discharge for two 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.