

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION NO. 324 of 2016**Friday, this the 09th day of February, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Harbans Singh P. No. 67154 Indian Navy, Rank M.E. (I), resident of 124A/540, Block 11, Govind Nagar, Kanpur-208006, through his next friend Manmeet Singh, son of Harbans Singh, resident of 124A/540, Block 11, Govind Nagar, Kanpur-208006.

....Applicant

Ld. Counsel for the applicant: **Shri D.S.Tiwari**, Advocate

Versus

1. The Union of India through Secretary, Ministry of Defence, 101, A South Block, New Delhi-110011
2. Chief of Naval Staff, Integrated Head Quarters, Ministry of Defence, Sena Bhawan, New Delhi-110011.
3. Secretary, Department of Ex- Servicemen Welfare, Room No. 5A, South Block, New Delhi- 110011.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat Allahabad -211014.
5. Deputy Director (Pension), Directorate of Pay & Allowances, Integrated Headquarters, Ministry of Defence (Navy), D-II Wing, Sena Bhawan New Delhi-110105.

.....Respondents

Ld. Counsel for the:
Respondents.**Shri Arun Kumar Sahu,**
Addl. Central Govt. Standing Counsel.
assisted by Lt Cdr Chinmay Sharma
OIC Legal Cell.**ORDER****Per Justice SVS Rathore, Member (J)**

1. We have heard learned counsel for the parties and perused the record.

2. By means of this OA under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

- “ (1) To quash and set aside the impugned order dated 03.09.2014 of respondent no. 5 annexure no. A-1;*
- (2) To grant and order to respondents to disburse the disability pension from 30.09.1965 retrospectively till the date of disbursement of such amount with compound interest of 18% per annum for incurable mental unsoundness of applicant;*
- (3) to award costs of the present application in favour of the applicant;*
- (4) to issue any other suitable Order or Direction which this Hon'ble Court may deem fit and proper.”*

3. Applicant Harbans Singh, who is very old and is alleged to have been suffering from mental disorder, has made a claim for disability pension by means of this OA, which has been moved through his son Manmeet Singh. It was objected to by the respondents. However, the Tribunal, vide its order dated 21.12.2016, after considering the said point has admitted this OA for hearing.

4. In brief, the facts, necessary for the purposes of this OA, may be summarised as under:

The applicant joined the Navy on 04.04.1960 and was medically boarded out on 30.09.1965 after rendering 05 years, 05 months and 26 days of service. His invaliding disease 'Psychopathic Personality (WHO 320)' was considered as neither attributable to nor aggravated by the naval service as per AFMSF-81. The applicant made a claim for grant of disability pension before the competent authority, but the same was rejected by the PCDA (P), Allahabad vide letter dated 04.11.1965. The order of rejection was communicated to the applicant vide letter dated 24.11.1965. However, the applicant was sanctioned Invalid Gratuity as per his entitlement.

5. Admittedly, the applicant was invalided out from service in low medical category. However, there is no document filed on behalf of the applicant or the respondents showing the percentage of disability at the time of his invaliding out.

6. In the counter affidavit, it is stated by the respondents that the applicant was medically boarded out from service due to disease which was neither attributable to nor aggravated by the naval service. However, no medical certificate or report of medical board has been filed on behalf of the respondents in support of the aforesaid averment. There is also no note of any disease having been recorded at the time of the applicant's acceptance for naval service.

7. The proposition of law with regard to disability pension has been settled by the Hon'ble Supreme Court and is no more a *res integra*. Hon'ble the Apex Court in the case of **Dharamvir Singh versus Union of India and others**, reported in (2013) 7 SCC 316, has 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 invalided 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)."

8. In the present case, it is undisputed that no note of any disease has been recorded at the time of the applicant's acceptance for naval service. The respondents have failed to bring on record any document to suggest that the applicant 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 joining of applicant, 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 applicant's acceptance for naval service. There is nothing 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 of the applicant was not due to naval service.

9. Learned counsel for the applicant has submitted that in the absence of any medical document to the contrary, it is to be presumed that the disability of the applicant was more than 20% because of which he was medically boarded out from service. He further submits that even if the percentage of disability is considered to be less than 20%, then in that case too, the applicant would be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army Part-I(1961). In support of his aforesaid submission, learned counsel for the applicant has placed reliance on the decision of Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) 14 SCC 364. He further submits that in the case of percentage of disability being low, it should further be rounded off to 50% for life as per decision of the Hon'ble Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10th December 2014)**. In this context, it would be relevant to quote relevant portion of the observations made by the Hon'ble Apex Court in the case **Sukhvinder Singh (supra)**, which is 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 percent 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 percent disability pension.”

10. We find force in the submissions of the learned counsel for the applicant. Keeping in view the facts of the present case and the pronouncements of the Hon'ble Apex Court in the cases of **Sukhvinder Singh** and **Ram Avtar** (supra), the applicant becomes entitled to the relief of disability pension.

11. Now, we come to the claim of applicant for arrears of disability pension. On the point of arrears, we would like to refer to the pronouncements of Hon'ble Supreme Court in the cases of **Shiv Dass versus Union of India** reported in *2007 (3) SLR 445* and **Union of India versus Tarsem Singh**, *Civil Appeal No. 5151-5152 of 2008*, decided on 13th August, 2008. In both the cases, the Hon'ble Apex Court has observed that in such cases, the arrears should be restricted only to three years before the date of filing of the petition. This OA has been filed on 01.09.2016; therefore, the applicant is entitled for arrears from 31.08.2013.

12. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The respondents are directed to grant disability pension to the applicant at the rate of 50% for life from a date three years prior to the date of filing of this OA. The respondents are further directed to make payment of arrears of disability pension to the applicant from 31.08.2013. This exercise shall be completed within a period of four months from today, failing which the respondents shall have to pay interest at the rate of 9% per annum on the total amount, from the date it becomes due till the date of actual payment.

The Registry is directed to provide a copy of this order to the respondents for its onwards transmission and compliance.

No order as to costs.

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

**(Justice SVS Rathore)
Member (J)**

February 09, 2018

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