

Court No. 1 (List B)
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 153 of 2013

Wednesday this the 01st day of March, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex Guardsman Shriram (No.13662690) Son of Shri Bhikham
resident of Village Simra Majra Fatiyapur
Post Office Sungata District Hardoi (U.P.)

..... **Applicant**

By Legal Practitioner : Col Rakash Johri (Retd) and
Lt Col A.K.Saxena,(Retd),
Ld. Counsel for the applicant.

Vs.

1. Union of India through the Secretary,
Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the
Ministry of Defence (Army) South Block, New Delhi-
110 011.
3. Chief Controller Defence Accounts (Pension).
Allahabad (U.P.)
4. Officer Incharge Records, Brigade of Guards
PIN 900 746, c/0 56 APO

..... **Respondents**

By Legal Practitioner : Ms Amrita Chakraborty,
Ld.Counsel for the respondents.

ORDER

Per Hon'ble Lt Gen Gyan Bhushan, Member (A)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 whereby he has claimed following reliefs :-

“(a) issue/pass an order or a direction quashing the orders dated 26.04.2011 and 19.12.2012 of denial of Disability pension to the applicant (Annexure 1A and 1B);

(b) issue/pass an order or direction to the respondents to grant disability pension to the applicant having a casual connection with service;

(c) issue/pass an order to respondents to grant benefits of rounding off of the disability pension to the Applicant;

(d) issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case;

(e) Allow this application with cost.”

2. The factual matrix of the case is that the applicant was enrolled in the Army on 21.12.1965 and was discharged from service with effect from 30.10.1969 (afternoon) under Rule 13 (3) III (iii) of the Army Rules, 1954, for the disease “**PSYCHONEUROSIS**”. Medical Board considered the disability of the applicant as 20% permanent and considered it as neither attributable to nor aggravated by military service. His claim for grant of disability pension was rejected by PCDA (P) Allahabad. Thereafter, the applicant's application for grant of disability pension dated 13 Sep 2012 was also rejected vide order dated 19.12.2012. Aggrieved, the applicant filed this Original Application. The delay in filing the Original Application has been condoned vide order dated 23.11.15.

3. Heard Col Rakesh Johri (Retd) and Lt Col AK Saxena (Retd), Learned Counsel for the applicant, Mrs. Amrita Chakravorty, counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was invalided out of military service on 30 Oct 1969 for the disease **“PSYCHONEUROSIS”**. He submitted that while undergoing recruit training, he had sustained a bullet injury in his ankle in an accidental fire by a fellow recruit, but he was told to keep quiet and he did not tell anyone about it. Later again in an organized training, he sustained a severe head injury, but again he was instructed not to speak about it. He was treated for both the injuries in different military hospitals. However, suddenly without any information or notice to the applicant, his Medical Board was held and he was invalided out of service on 30 Oct 1969. He was not given any paper or Medical Board Proceedings but was verbally told that he would get pension for life. Learned Counsel for the applicant submitted that the applicant has been approaching the respondents but his request for disability pension has been turned down since it has been assessed as neither attributable to nor aggravated by military service. He further submitted that at the time of enrollment, the applicant was examined medically and was found mentally and physically fit and there is no note in his service documents that he was suffering from any disease at the time of entry in service, as such the disability is due to military service. He also submitted that the applicant is also entitled to benefit of rounding off as per policy letter dated 31.01.2001. He further submitted that in similar cases, various

Benches of the Armed Forces Tribunal have granted disability pension as also granted the benefit of rounding off.

5. **Per contra**, Learned Counsel for the respondents submitted that the applicant was discharged from service based on the recommendation of a Medical Board because of disability due to '**Psychoneurosis**' and it was assessed as neither attributable to nor aggravated by military service. Learned Counsel for the respondents submitted that as per records, the applicant had not sustained any bullet injury or head injuries as alleged during the course of his training and that the applicant was invalided out of service due to disease '**Psychoneurosis**' and not because of any bullet or head injuries. Learned Counsel for the respondents, refuting the allegation of injury to the applicant, further submitted that applicant's claim for disability has rightly been rejected as per Paragraph 173 of Pension Regulations 1961 (Part-1), which clearly states that pension may be granted to an individual who is invalided from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above.

6. We have gone through the relevant rules and regulations on the issue on the question of attributability of disability to military service. We would like to refer the judgment and order of Hon'ble The Apex Court in the case of **Dharamvir Singh Vs. Union of India and Ors** reported in (2013) 7 **Supreme Court Cases 316**, in which Hon'ble The Apex Court had 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 invalidated 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).

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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.*”

7. On the issue of grant of disability pension, we would also like to recall the judgment passed in the case of **Sukhhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC, in para 9 of the judgment Hon’ble The 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.....”.

8. In the instant case, the applicant was enrolled in the Indian Army on 21.12.1965 and he was discharged from service on 30.10.1969 (afternoon) in low medical category for the disease **“PSYCHONEUROSIS”**. We have given due consideration to the rival submissions made by Learned Counsel for the parties. Even if allegation of injuries during service is not taken into consideration, since it has been refuted by the Learned Counsel for the respondent and also in view of available records, even then the factual

matrix which stands out is that the applicant was enrolled in a medically fit condition and was discharged after approximately 03 years 10 months of service in low medical category. We find that at the time of enrolment, the applicant was in sound, physical and mental condition and was medically fit at the time he joined the Army. There is no note of any disease or disability in the service record of the applicant at the time of enrolment in service and respondents have not been able to produce any document to prove that the disease existed before his enrolment. In absence of any evidence on record to show that the applicant was suffering from any ailment at the time of enrollment in service, it will be presumed that disability has occurred during service. We find that the applicant was enrolled in the Indian Army in a fit medical condition and he has suffered the disability during service, therefore, in view of the judgment of the Hon'ble The Apex Court in the cases of **Dharmvir Singh** (supra), **Sukhvinder Singh** (supra), the applicant is entitled to disability pension.

9. On the issue of benefits of rounding off of disability pension, we recall the decision of Hon'ble The Apex Court in the case of **Union of India and others vs. Ram Avtar & others, Civil Appeal No. 418 of 2012 dated 10 December, 2014**, in which Hon'ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. In view of Policy

Letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and decision of Hon'ble The Apex Court in the case of **Ram Avtar** (supra), we are of the view that the applicant is entitled to the benefit of rounding off.

10. On the issue of delay and payment of arrears, we recall the case of **Shiv Dass Vs Union of India reported in 2007 (3) SLR 445** wherein in Para 9 of the judgment, Hon'ble The Apex Court has observed:-

“9. In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. In view of the above, we are of the view that the impugned orders passed by the competent authority were not only unjust, illegal but also not in conformity with Rules, Regulations and Law. The impugned orders deserve to be set aside and the applicant is entitled to disability pension @ 30% for life, which needs to be rounded off to 50%.

12. Thus in the result, the Original Application **No. 153 of 2013** succeeds and is allowed. The impugned orders dated 26.04.2011 and 19.12.2012 are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life in terms of decision of Hon'ble The Apex Court in cases of **Dharmvir Singh** (supra) and **Sukhvinder Singh** (supra) from three years prior to filing of the Original Application i.e. 07.05.2013 till the

date of actual payment, which would stand rounded off to 50% for life in terms of the decision of Hon'ble The Apex Court in the case of **Ram Avtar** (supra). The respondents are directed to give effect of this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : March ,2017
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