

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 240 of 2020**Monday, this the 22nd day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex Sep Vandeo Dattu Kokane (13950813-H)
S/o Sh. Dattu Kokane
R/o 248 1st Floor, Gali No. 3 Shalimar Village
Shalimar Bagh, New Delhi – 110011

..... Applicant

Ld. Counsel for the Applicant : **Ms. Tanya**, Advocate holding brief of
Wg Cdr Ajit Kakkar (Retd), Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MOD (Army) Sena Bhawan, New Delhi – 110011.
3. The Record Officer, Army Medical Corps Record Office, PIN-900450, C/o 56 APO.
4. PCDA, Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
Central Govt Counsel.**ORDER**

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

“a. To direct the Respondents to produce all medical records of the applicant.

b. To direct the Respondent to grant invalid pension to the applicant from 23.11.1989.

- c. To direct the respondent to grant the benefit of rounding off the disability pension to 50% from date of discharge.
- d. To direct the respondents to issue a corrigendum PPO pertaining to the disability and broad banding of the disability pension.
- e. To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12%.
- f. To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 06.09.1980 and was invalided out of service on 23.11.1989 (FN) in low medical category under Army Rule 13 (3) III (iii) after rendering 09 years, 02 months and 16 days (excluding 01 day of non qualifying service) of service. The Invaliding Medical Board (IMB) assessed his disability “**SCHIZOPHRENIA**” @ 60% for two years and opined the disability as neither attributable to nor aggravated by military service. The disability pension claim of the applicant was rejected by the respondents vide order dated 15.04.1991. Thereafter, applicant preferred a complaint dated 13.07.2018 which was suitably replied by the respondents vide letter dated 31.08.2018. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of

enrolment. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of IMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgments of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (2013) 7 SCC 316, ***Union of India & Ors vs. Rajvir Singh*** (2015) 12 SCC 264, ***Union of India & Ors vs. Angad Singh Titaria*** (2015) 12 SCC 257 and ***Sukhvinder Singh vs. Union of India***, Civil Appeal No. 5605 of 2010, decided on 25.06.2014 and pleaded that applicant also be granted disability pension duly rounded off as per Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as 60% for two years by IMB as neither attributable to nor aggravated by military service and it is a psychiatric disorder related to his genetic constitution and has no relation with service. Hence, as per Rule 173, 197 and 198 of Pension Regulations for the Army 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. In this case the Apex Court took note of the provisions of the Pensions 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)."

7. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to applicant only by endorsing a cryptic

sentence in the proceedings i.e. 'a psychiatric disorder related to his genetic constitution and has no relation with service'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started after about 9 years of service, therefore, we are of the considered opinion that the benefit of doubt should be given to applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 60% disability pension for two years from his date of discharge from service.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability pension @ 60% for two years from the date of discharge from service. The respondents are directed to grant disability pension @ 60% for two years from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: February, 2021

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