

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 12 of 2013

Wednesday this the 16th day of September, 2015

Hon'ble Mr. Justice V.K. DIXIT, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex-Sub Major Dinesh Pal Singh (JC-327370-H)
of HQ Chief Engineer, Central Command, Lucknow,
Son of Late. Shiv Nath Singh, resident of Village –
Mahsonama, Post Office – Chhibramau,
Tehsil – Bilgram, District – Hardoi (U.P.) – 241001
..... Applicant

By Legal Practitioner Shri P.N. Chaturvedi, Advocate

Versus

1. Union of India, through Secretary,
Department of Defence, New Delhi.
2. Officer in charge, EME Records,
Secunderabad

..... Respondents

By Legal Practitioner Shri D.S. Tiwari, Learned Counsel
for the Central Government

ORDER

“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, and he has claimed the reliefs as under:-

- “(i) That the Hon’ble Tribunal may kindly be pleased to order to opposite parties that the claim of the applicant regarding disability pension to give the arrear of dues of disability pension from Year 2004.*
- (ii) That the Hon’ble Tribunal may kindly be please to order to the opposite party to provide the medical treatment authorized Medical Board pension.*
- (iii) That allow the application of the applicant with costs.*
- (iv) That impugned order dated 16.06.2005 in O.A. Annexure No.-1 and 29.11.2006 (CA-5) in appeal respectively vide Annexure No. 1 & 2 kindly be quashed in the interest of justice as being illegal orders.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 21.03.1983 and was discharged from service with effect from 31.08.2012 on completion of his term of engagement in medical category “P2 (Permanent). Prior to his discharge, release medical board was held, which assessed his disability for disease

CAD, ACS, SVD, RAC, LV Function (30%) and Primary Hypertension (30%) with composite disability of 50% for life. His claim for disability pension was rejected, because the disability was considered neither attributable to nor aggravated by military service. Aggrieved by non-grant of disability pension, the applicant filed the instant O.A.

3. Heard Shri P.N. Chaturvedi, Learned Counsel for the Applicant, Shri D.S. Tiwari, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that at the time of recruitment, the applicant was medically fit and prior to joining the military service, he was medically examined and no such disease was noticed by the medical authorities. Onset of these two disease took place on 25.04.2008 and initially, he was placed in category P2 (Temporary) and later on his category was changed to P2 (Permanent) and this category continued till his discharge from service. His disability claim was rejected, because medical board considered the disability neither attributable to nor aggravated by military service. He further submitted that there is no note of the disease/disability at the time of his acceptance in service, as such it has to be considered as attributable to and aggravated by military service. The

applicant's Counsel placed reliance on the judgment of Hon'ble The Apex Court in the case of **Dharamvir Singh vs. Union of India & others** reported in (2013) 7 SCC 316, and the subsequent judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh Vs. Union of India** reported in (2014) STPL (WEF) 468 SC.

5. Per contra Learned Counsel for the respondents submitted that the medical board had assessed the applicant's composite disability as 50% for life, but both the disabilities were considered neither attributable to nor aggravated by military service. Since the applicant was not meeting the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations for the Army, his claim was rightly rejected by the competent authority. He also submitted that the applicant had not filed any appeal against the rejection of disability pension.

6. Precise submission, on which the claim of the applicant for disability pension was rejected is that the disability was considered neither attributable to nor aggravated by military service.

7. 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.

- a. *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.*

X X X X X X X X

20. *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."*

8. In the case of **Dharmvir Singh Vs. Union of India & others (supra)** 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).”

xxx

xxx

xxx

“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”*

xxx

xxx

xxx

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.*

xxx

xxx

xxx

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.”

9. In **Sukhvinder Singh Vs. Union of India (supra)**, 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.....”.

10. Having given due considerations to the rival submissions made on behalf of the parties’ Learned Counsel, we find that the applicant at the time of joining army was in sound physical and mental condition as no note of any disability or disease was made at the time of his acceptance for Army service. He suffered the disability during his service period, and therefore, in view of the judgment of the Hon’ble Apex Court in the case of **Dharmvir Singh Vs. Union of India & others (supra)** and the subsequent judgment of the Hon’ble Apex Court in the case of **Sukhvinder Singh Vs. Union of India (supra)**, a presumption has to be drawn in favour of the applicant,

who is discharged in low medical category. Since the applicant suffered the disease due to army service, it is for the respondents to rebut the claim of the applicant. 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.

11. In this case, medical board had not given reasoned opinion, 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 disease 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 The Apex Court.

12. In view of the facts, circumstances and case laws discussed above, we are of the considered view that the applicant is entitled to grant of disability pension @ 50% for life. The O.A. No. 12 of 2013 is allowed. The respondents are directed to grant disability pension to the applicant @ 50% for life from the date of discharge and pay arrears of disability pension with interest @ 9% per annum till the date of actual payment. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

13. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)
sry

(Justice V.K. DIXIT)
Member (J)

