Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 185 of 2013

Wednesday this the 04th day of November, 2015

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

No. 171740-W Ex LAOM Anil Kumar Rawat,
aged 43 years, S/o Shri Netra Singh Rawat,
R/o Vill & Town : Malkot Teh : Lansdwane,
PO : Gawani (Pokhra), Dist : Pauri Garhwal,
(Uttarakhand) - 246169

…….. Applicant

By Legal Practitioner Shri Shailendra Kumar Singh, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Naval Staff, Integrated Headquarters, Ministry of Defence (Navy), Sena Bhawan, New Delhi - 110011.
3. Commodore, Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai (Maharashtra) – 400088.
4. PCDA (Navy), Pension Cell, Mumbai (Maharashtra)
5. PCDA (Pensions), Navy Cell, Draupadi Ghat, Allahabad (UP).

…… Respondents

By Legal Practitioner Shri Ishraq Farooqui, 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:-

"A. to pass order or direction to Respondent to Summon the Medical Board Proceedings and set aside/quash the same.

B. to pass order or direction to Respondent to pay disability pension to the applicant from the date of discharge.

C. to issue order or direction to Respondent to conduct the Resurvey Medical Board to assess the present condition of the applicant.

D. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

E. Cost of the application may be awarded to the applicant.

F. To quash and set aside the Respondent No. 3 (Bureau of Sailors) decision communicated to the applicant vides their letter No. DP/D/LRDO/171740-W dated 10 Mar 2004 (Annexure A-4).

G. To quash and set aside the First Appellate Committee decision communicated to the applicant vide their letter No. PN/0134/197/IHQ(N)/DPA dated 18 May 2005 (Annexure A-6).

H. To quash and set aside second Appellate Committee decision communicated to the

applicant vide their letter No. 1(86)/2007/D(Pen A & AC) dated 12 Dec 2007 (Annexure A-1).”

2. The factual and undisputed fact of the case is that the applicant was enrolled in the Indian Navy on 17.09.1988 and discharged on 30.09.2003 after over 15 years of service in low medical category for “**Schizophrenia (Old) ICD No. F-20.0** (20% disability) and **Type 2 Diabetes Mellitus (Non Obese) ICD No. E-11, 2-09.0** (20% disability)”. Release Medical Board held prior to his discharge assessed the composite disability @ 40% for life long and permanent and considered it neither attributable to nor aggravated by the naval service. His claim for disability pension was rejected. His first appeal was rejected vide letter dated 18.05.2005 and subsequently he preferred his second appeal which was also rejected vide letter dated 12.12.2007. Aggrieved, the applicant has preferred this Original Application. There is a delay of 04 years, 07 months and 09 days in filing the Original Application and the same has been condoned vide Tribunal’s order dated 30.05.2013.

3. Heard Shri Shailendra Kumar Singh, Learned Counsel for the applicant, Shri Ishraq Farooqui, Learned Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Navy after proper medical examination and he was considered medically fit. The applicant after successful completion of the training, was posted to various units and he performed his duties well and always kept service before him. Learned counsel for the applicant submitted that the applicant’s disability of “Schizophrenia (Old) ICD No. F-20.0 and Type 2 Diabetes

Mellitus (Non Obese) ICD No. E-11, 2-09.0" started from July 2000. Thus, it is self explanatory that the applicant was hail and healthy at the time of enrolment and has suffered disability during the service as such his disability should be considered as attributable to naval service and he should be granted disability pension.

5. Per contra, the learned counsel for the respondents submitted that the precise reason for rejection of disability pension is that medical board considered the disability of the applicant as neither attributable to nor aggravated by naval service, as such as per Regulations 101 read with Rule-4 of Appendix V of Navy (Pension) Regulations, 1964 (Statutory), disability pension is admissible only when the disability is either attributable to or aggravated by service and the question of attributable and aggravation is to be decided by the Competent Authority.

6. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portions of The Navy (Pension) Regulations, 1964, and the provisions of Rules 4, 5, 9, 14 and 22 of the Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

(a) **<u>The Navy (Pension) Regulations, 1964</u>**

"101. ***Conditions for the grant of disability pension*** *- 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.*

Explanation (1) The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the rules contained in Appendix V of these regulations.

Explanation (2) xxx xxx xxx."

"(b) **Entitlement Rules for Casualty Pensionary Awards, 1982**

4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.

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.

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Disease

14. ***In respect of disease, the following rules will be observed:-***

(a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

i) That the disease has arisen during the period of military service, and

ii) That the disease has been caused by the conditions of employment in military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.

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22. **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."

7. 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)."

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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."

8. 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. 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."*

9. On the question whether the disability is attributable to or aggravated by military service, we feel called to refer to the decision of Hon'ble The Apex Court **in Union of India vs. Rajbir Singh, Civil Appeal No.2904 of 2011 decided on 13.02.2015,** wherein The Apex Court considered all the above decisions and observed as under:

> *"16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be*

presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants."

10. In **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th 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. The relevant portion of the decision being relevant is excerpted below:

"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made

available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

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6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

11. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of Hon'ble The Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was invalided out of service on account of his 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, would also be entitled to the benefit of rounding off.

12. In the case of **Shiv Dass Vs Union of India reported in 2007 (3) SLR page 445 (Supra)** in Para 9 of the judgment, Hon'ble The Apex Court has observed:

> *"In the case of the pension the cause of action actually continues from month. That however, cannot be a ground to overlook delay in filing the pension. It would depend upon the fact of each case. It 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."*

13. In this connection, we feel called to refer to the decision of Hon'ble The Apex Court in **Union of India Vs Tarsem Singh 2008 (8) SCC 648.** The respondent while working in the Army was invalided out in medical category on 13.11.1983 and approached the High Court seeking a direction to the Union of India to pay him disability pension. The question that surfaced in that case was as to whether the claim of the person qua disability pension is barred by time or not. The Apex Court taking into consideration its earlier judgments in various cases held as under:-

> *"5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect*

the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

14. The aforesaid judgment proceeds on the footing that claim for pension is based on a continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. This appears to be the crux of the case.

15. We have given due considerations to the rival submissions made on behalf of the parties' Learned Counsel and we find that at the time of enrollment, the applicant was medically fit and he suffered the disability during his service. Therefore, in view of the judgment of the Hon'ble The Apex Court in the cases of **Dharmvir Singh Vs. Union of India & others** (supra) **Sukhvinder Singh Vs. Union of India** (supra) and **Union of India vs. Rajbir Singh** (supra), a presumption has to be drawn in favour of the applicant. The applicant cannot be called upon to prove his claim for the disability once he was enrolled in fit medical conditions and was discharged in low medical category, but it is for the respondents to rebut his claim.

16. In this case, the medical board has not given any reason for arriving at the conclusion that the applicant's disability is neither attributable to nor aggravated by naval service. There is no note of such disease or disability in the service record of the applicant at the time of joining Indian Navy. **In fact, medical board in the column 'Did the disability exist before entering service" has mentioned 'NO'**. There is no evidence on record to show that the applicant was suffering from that disease or disability at the time of his enrollment in Navy, as such it will be presumed that the applicant 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 applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court.

17. In the above conspectus, we are of the considered view that the impugned orders passed by the respondents were not only unjust, illegal but also were not in conformity with rules, regulations and law. The impugned orders passed by the respondents deserve to be set aside and the applicant is entitled to disability pension @40% for life from 03 years prior to filing the instant Original Application i.e. from 22.01.2010 and arrears of disability pension with interest @ 9% per annum.

18. In the result, O.A. No. 185 of 2013 is allowed. The impugned orders dated 10.03.2004, 18.05.2005 and 12.12.2007 are set aside. The applicant shall be entitled for disability pension @ 40% for life as recommended by the medical board and it would be rounded off to 50% as per policy and in the light of the judgments of Hon'ble The Apex Court in case of **Sukhvinder Vs. Union of India**

(supra) and **Union of India & others vs. Ram Avtar & ors** (supra). The respondents are directed to grant disability pension to the applicant @ 50% for life. Regard being had to the decision of **Shiv Dass vs. Union of India** (supra) and **Union of India vs. Tarsem Singh** (supra), the payment of interest is restricted to a period of three years prior to filing of the original Application i.e. 22.01.2010. The respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum from three years prior to filing of O.A. i.e. from 22.01.2010 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.

19. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated : November 2015
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