

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 194 of 2013

Friday this the 16th day of October, 2015

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

No.13996175N Ex Rect
Ashok Chakrabarti Son of Sri Amresh Chakrabarti
Care Raju Mandal Lal Kothi (Room No.3)
Opposite Hasty Tasty Bar, Civil Lines,
Allahabad

..... Applicant

By Legal Practitioner Shri Rohit Kumar, Advocate

Versus

1. Chief of Army Staff Army Headquarters,
New Delhi
2. Commandant cum Chief Records Officer
AMC Centre and Records, Lucknow
3. Principal Controller of Defence Accounts (Pensions)
Draupadighat, Allahabad
4. Union of India Through Secretary
Ministry of Defence New Delhi

..... Respondents

By Legal Practitioner Shri Prakhar Kankan, 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 main reliefs as under:-

- “(a) *Quash the Army Headquarters, Adjutant Generals Branch, Additional Director General Personal Services, Room No.435, Fourth Floor Sena Bhawan, New Delhi letter no. B/38046A/350/2012/ AG/PS-4 (IInd Appeal) dated 31 Dec 2012 (Annexure A-1) WHICH WAS RECEIVED (from AMC Records vide their no.13996175/Pen/DP-RSMB-II dated 11 Jan 2013), by the applicant on 28 Jan 2013 (Annexure A-2 refers) rejecting the claim for grant of disability pension to the applicant.*
- (b) *Grant disability pension to the applicant from the day applicant was medically boarded out from service.*
- (c) *Quash the rejection of grant of pension by the Principal Controller of Defence Accounts (Pensions), Allahabad vide order no.G-3/85/ 339/9/98 dated 15 Jun 1999 (contained in AMC Records Lucknow letter no. C/13996175/ DP/P-4 dated 07 Jul 1999) with all consequential benefits to the applicant.*
- (d) *Quash the rejection orders of the Government of India, Ministry of Defence (FAC) order no.7(2316)99 D (Pen A & AC) dated 11 Sept 2000 with all consequential benefits to the applicant.*

- (e) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (f) *Award cost of the petition.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 31.08.1996 and was invalided out of service with effect from 23.03.1998. Medical board held on 26.02.1998 assessed his disability for disease 'SCHIZOPHRENIA' @ 80% for 02 years and considered it neither attributable to nor aggravated by military service. Claim for disability pension of the applicant was rejected vide order dated 15.06.1999 and subsequently, his first appeal against the rejection of claim for disability pension was also rejected vide order dated 11.09.2000. Aggrieved, the applicant filed writ petition before the Hon'ble High Court of Judicature at Calcutta, which was dismissed for want of jurisdiction. Thereafter, the applicant filed writ petition No.28609 of 2003 before the Hon'ble High Court of Judicature at Allahabad, which stood transferred to this Tribunal and has been registered as Transferred Application No.1358 of 2010. Since the applicant had not exhausted the alternative remedy of second appeal, he filed second appeal during pendency of the aforesaid Transferred Application. The Tribunal while dismissing the Transferred Application vide its order dated 10.05.2011 held that the applicant could not be permitted to avail two remedies simultaneously and relegated him to get his second appeal decided first. Thereafter, the applicant's second appeal was dismissed vide order dated 31.12.2002 passed by Second Appellate Committee on Pensions and now the applicant has filed the instant Original Application.

3. Heard Shri Rohit Kumar, Learned Counsel for the applicant, Shri Prakhar Kankan, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant was enrolled after proper medical examination and he underwent training, but could not be attested for want of receipt of police verification report. In the meanwhile, the applicant had high fever and was sent to Command Hospital, Lucknow, where requisite attention was not paid and the fever did not subside. The applicant was shifted to Psychiatric Ward, where the treatment was changed and it included electric shock treatment, which resulted into complication and the applicant was medically boarded out as a case of “**Schizophrenia**” with 80% disability for 2 years.

5. Learned counsel for the applicant further submitted that the applicant was invalidated/medically boarded out of service on account of Schizophrenia after rendering 01 year, 06 months and 22 days of qualifying service and his claim for grant of disability pension was wrongly rejected on the ground that the disability was considered neither attributable to nor aggravated by military service and his first and second appeals have also been rejected. He further submitted that since at the time of enrollment, the applicant was in fit medical condition, as such the disease should be considered as attributable to and aggravated by military service and disability pension should be granted to the applicant in view of Para 173 of the Pension Regulations for the Army, 1961. The applicant’s Counsel also submitted orally, though not contained in the pleadings, that as per

Government Order dated 31.01.2001 the disability pension be rounded off to 100%.

6. Per contra, the learned counsel for the respondents submitted that the medical board had assessed the disability as 80% for 02 years and it was considered neither attributable to nor aggravated by military service, as such the applicant was not fulfilling the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations for the Army, 1961 (Part –I), 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. The applicant had suffered with disease “**Schizophrenia**”, hence the disability of the applicant was assessed by medical authorities as neither attributable to nor aggravated by military service and his claim for disability was rejected. First and second appeals of the applicant were also rejected, therefore, the applicant is not entitled for grant of disability pension.

7. Precise reason for rejection of applicant’s claim for disability pension is that his disability was considered neither attributable to nor aggravated by service.

8. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portions of the Pension Regulations for the Army 1961 (Part I), and the provisions of Rules 4, 5, 9, 14 and 22 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) **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.

XXX XXX XXX XXX

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.”

9. 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.”

10. 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.....”.

11. In **Union of India vs. Rajbir Singh, Civil Appeal No.2904 of 2011 decided on 13.02.2015**, Hon’ble The Apex Court has held 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 un rebutted. 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.”

12. In the case of **Veer Pal Singh vs. Ministry of Defence** reported in (2013) 8 SCC 83, the observations made by Hon’ble the Apex Court are as under :

“11. A recapitulation of the facts shows that at the time of enrolment in the army, the appellant was subjected to medical examination and the Recruiting Medical Officer found that he was fit in all respects. Item 25 of the certificate issued by the Recruiting Medical Officer is quite significant. Therein it is mentioned that speech of the appellant is normal and there is no evidence of mental backwardness or emotional instability. It is, thus, evident that the doctor who examined the appellant on 22.05.1972 did not find any disease or abnormality in the behaviour of the appellant. When the Psychiatrist Dr (Mrs) Lalitha Rao examined the appellant, she noted that he was quarrelsome, irritable and impulsive but he had improved with the treatment. The Invaliding Medical Board simply endorsed the observation made by Dr Rao that it was a case of “Schizophrenic reaction”.

12. In Merriam Webster Dictionary “Schizophrenia” has been described as a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as in delusions), perception (as in hallucinations), and behavior – called also dementia praecox; schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history.

13. The National Institute of Mental Health, USA has described “schizophrenia” in the following words:

“Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices other people don’t hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated. People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Sometimes people with schizophrenia seem perfectly fine until they talk about what they are really thinking. Families and society are affected by schizophrenia too. Many people with schizophrenia have difficulty holding a job or caring for themselves, so they rely on others for help. Treatment helps relieve many symptoms of schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities”.

17. *Unfortunately, the Tribunal did not even bother to look into the contents of the certificate issued by the Invaliding Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. If the learned members of the Tribunal had taken pains to study the standard medical dictionaries and medical literature like *The Theory and Practice of Psychiatry* by F.C. Redlich and Daniel X. Freedman, and Modi’s *Medical Jurisprudence and Toxicology*, then they would have definitely found that the observation made by Dr Lalitha Rao was substantially incompatible with the existing literature on the subject and the conclusion recorded by the Invaliding Medical Board that it was a case of schizophrenic reaction was not well founded and required a review in the context of the observation made by Dr Lalitha Rao herself that with the treatment the appellant had improved. In our considered view, having regard to the peculiar facts of this*

case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant.

18. In Controller of Defence Accounts (Pension) vs. S Balachandran Nair on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in Ministry of Defence vs A.V. Damodaran. However, in neither of those cases, this court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.

19. As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14.07.2011 and 16.09.2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension.”

13. 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

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.

15. Having given considerations to the rival submissions made on behalf of the parties' Learned Counsel, we find that the applicant had been enrolled in the Indian Army in a fit medical condition and he suffered the disability during his service, and 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 pension once he was enrolled in fit medical conditions and was discharged (invalided/medically boarded out) in low medical category. It is for the respondents to rebut the claim of the applicant.

16. In the instant case, no reasoned opinion has been given by the medical board, on the basis of which the medical board concluded that the applicant's disease was neither attributable to nor aggravated by the service. There is no note of such disease or disability in the service record of the applicant at the time of enrollment in service. **In fact, medical board in the column 'Did the disability exist before entering service' has mentioned 'NO'**. In absence

of any evidence on record to show that the applicant was suffering from any disease or disability ailment at the time of his enrollment 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 applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court.

17. In view of the above, 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 @80% for 02 years from the date of discharge (invalidment) along with interest @ 9% per annum. We are also of the view that the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

18. Thus in the result, the O.A. No. 194 of 2013 is allowed. The impugned orders dated 15.06.1999, 11.09.2000 and 31.12.2012 are set aside. The respondents are directed to grant disability pension to the applicant @ 80% for 2 years from the date of discharge as recommended by the medical board and shall also pay arrears of disability pension with interest @ 9% per annum from the date of discharge till the date of actual payment. The Respondents are directed to refer the applicant's case to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. In case the applicant represents,

the respondents shall also grant the benefit of rounding off of disability pension @ 100% as per policy and in the light of the order passed by Hon'ble The Apex Court in the case of **Union of India vs. Ram Avtar (supra)**. 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)

Sry

Dated : Oct. 2015