Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 285 of 2011

Thursday this the 10th day of September, 2015

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

Shri Bhagwan Singh (Service No.14545920H
Rank Ex. HAV, Unit 954 AD REGT Workshop),
Son of Shri Bangali Singh,
Resident of Village-Vishunpura,
Post Office-Suremanpur, District-Ballia.

…….. Applicant

By Legal Practitioner Shri K.B. Singh, 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 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:-

> *"(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 dated 29.11.2006 (CR-5) in appeal respectively vide Annexure No. 1 & 2 kindly be quashed in the interest of justice as being illegal orders."*

2. The admitted and undisputed facts of the case are that the applicant was enrolled in the Indian Army on 28.05.1982 and was discharged from service in medical category "SHAPE-I (P2 Permanent) on 31.12.2004 with 20% disability for life. The applicant put forth his claim for

disability pension, which was rejected vide order dated 16.06.2005 (Annexure No.1 to the O.A.), because it was considered neither attributable to nor aggravated by military service. The first appeal of the applicant was also rejected vide order dated 29.11.2006 (Annexure No. CR-5 to the counter affidavit). The applicant did not file any second appeal, rather he preferred writ petition No.17982 of 2011 before the Hon'ble High Court, which was dismissed with direction to the applicant to avail the remedy before the Armed Forces Tribunal. Therefore, the applicant has filed the instant O.A.

3. Heard Shri K.B. Singh, Learned Counsel for the Applicant, Shri Ishraq Farooqui, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the Applicant assailed the impugned order on the ground that at the time of recruitment, the applicant was medically fit. Prior to joining the military service, the applicant was medically examined and no such disease was noticed by the medical authorities. He completed 17 years of service, when he suffered from Complex Partial Seizures. The Applicant was admitted to M.H. Kirkee on 06.08.1999 and thereafter, he was admitted to Command Hospital, Pune and after

completing 22 years of service, he was discharged on 31.12.2004 in medical category SHAPE-1 (P2 Permanent) with 20% disability for life. His disability claim was rejected because the Medical Board considered it neither attributable to nor aggravated by military service. There is no note of such a disease or disability in the service record of the applicant at the time of acceptance in service, as such this has to be considered as attributable to and aggravated by service. The Applicant's Counsel placed reliance on the judgment of Hon'ble the Apex Court in the case of Dharamvir Singh 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. Lastly, the Learned Counsel for the Applicant made an oral submission, though not contained in the pleadings, that as per Government Order dated 31.01.2001 the disability pension be rounded off to 50%.

5. Per contra Learned Counsel for the Respondents submitted that the applicant was discharged in medical category SHAPE P-2 (Permanent) due to Complex Partial Seizures. The Medical Board has assessed the disability as 20% for life but it was 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. First Appeal was also rejected on 29.11.2006, the applicant did not prefer any Second Appeal against the rejection of his disability pension claim. Thereafter the applicant had filed a Writ Petition No. 17982/2011 before the Hon'ble High Court of Judicature at Allahabad for grant of disability pension from the date of his discharge. The said writ petition was dismissed by the Hon'ble High Court vide their judgment dated 29.03.2011 with directions to the applicant to avail the remedy before the Armed Forces Tribunal.

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. 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), 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.

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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 The 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"*

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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."

9. In **Sukhvinder Singh Vs. Union of India (supra),** the 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…….".

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.*
>
> *Xxx xxx xxx*
>
> *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 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. Having given anxious 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 period, and therefore, in view of the judgment of the Hon'ble The Apex Court in the case of **Dharmvir Singh Vs. Union of India & others** (supra) and the subsequent judgment of the Hon'ble The 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 service conditions and it is for the respondents to rebut the claim of the applicant. It is also made clear in the judgments of Hon'ble The 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 The Apex Court referred to above.

13. In this 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 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 ailment 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.

14. 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 @ 20% for life. The O.A. No. 285 of 2011 is allowed. The impugned orders dated 16.06.2005 and 29.11.2006 are quashed. The respondents are directed to grant disability pension to the applicant @ 20% from the date of discharge and pay arrears of disability pension with interest @ 9% per annum from the date of discharge till the date of actual payment. In case the Applicant represents, the Respondents shall also consider for rounding off of disability pension @ 50% 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). 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.

15. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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