Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 494 of 2012

Tuesday this the 3rd day of November, 2015

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

Rama Shanker Mishra (No. JC 162502A Ex Sub),
aged about 67 years, son of Late Shri Ram Nawal Mishra,
resident of village-Kalyanpur, post office – Iltifatganj,
district Ambedkar Nagar (Uttar Pradesh).

…….. Applicant

By Legal Practitioner Shri Yash Pal Singh, Advocate

Versus

1. Union of India through Secretary,
   Ministry of Defence, South Block,
   New Delhi.

2. Deputy Director of Medical Services, Headquarters,
   Madhya Pradesh, Bihar and Orissa Area
   (now Madhya Bharat Area), Jabalpur.

3. Officer-in-charge, Records, Signals, Jabalpur,
   PIN-901124, C/O 56 APO.

4. Commanding Officer, 4 Infantry Division,
   Signal Regiment, C/O 56 APO.

5. Principal Controller of Defence Accounts (Pension),
   Allahabad.

…… Respondents

By Legal Practitioner Shri Bhanu Pratap Singh Chauhan, Senior Standing 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) issuing/passing of an order or direction to the Respondents setting aside the order dated 31.10.1993 passed by Deputy Director of Medical Services, Headquarters, Madhya Pradesh, Bihar and Orissa Area, Jabalpur (Annexure No. 1 to the Original Application) reassessing and decreasing the percentage of disability of the applicant assessed by the Release Medical Board; and the order dated 24.05.1995 passed by the Principal Controller of Defence Accounts (Pension), Allahabad (Annexure No. 2 to the Original Application) rejecting the claim of the applicant for disability pension, after summoning the relevant original records; and grant disability pension from the due date including arrears thereof with interest.*
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> *(b) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
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> *(c) allowing this Application with cost."*

2. Undisputed facts of the case are that the applicant was enrolled in the Indian Army on 30.10.1965 and was discharged from service on 31.10.1993 (afternoon) under rule 13 (3) I (i) (a) of the Army Rules, 1954 on completion of 28 years of service, for which he is receipt of service pension. The applicant was discharged in low medical category due to **"IHD (EFFORT ANGINA) 414 V 67"**. Medical Board held on 19.10.1993 before his discharge

considered his disability for **"IHD (EFFORT ANGINA) 414 V 67"** as aggravated by military service and assessed the disability as 50% for 02 years, but the approving authority accepted the disability as 30% for 02 years. The claim for disability pension of the applicant was rejected by the PCDA (P), Allahabad vide order dated 24.05.1995 and it was communicated to the applicant with an advice to prefer appeal within 06 months, if he so desired. Petitions dated 28.09.2010 and 25.11.2010 filed by the applicant were suitably replied vide Signals Records letters dated 12.10.2010 and 14.01.2011, respectively. Aggrieved, the applicant has filed the instant Original Application and delay of over 17 years in filing of the Original Application has been condoned by this Tribunal vide order dated 05.08.2015.

3. Heard Shri Yash Pal Singh, Learned Counsel for the applicant, Shri Bhanu Pratap Singh Chauhan, Learned Counsel for the respondents and perused the record.

4. Learned counsel for the applicant has submitted that the applicant was enrolled in the Indian Army on 30.10.1965 and while in service he suffered from heart ailment in May, 1987 while posted in Laddakh Region. He remained under medical supervision and treatment. Release Medical Board held on 19.10.1993 before discharge assessed the disability of the applicant as 50% for 02 years, however, disability of the applicant was considered not attributable to military service, but aggravated due to stress and strain of the military service. The recommendation of the medical board was approved by the competent authority on 31.10.1993. The Officiating Deputy Director of Medical Services, Headquarters, Madhya Pradesh, Bihar and Orissa

Area, Jabalpur, although approved the recommendation of the medical board, but reduced the percentage of disability from 50% to 30%. Learned counsel for the applicant submitted that reassessment of the percentage of disability is arbitrary, unreasonable and without any basis. He further submitted that keeping in view the fact that Medical Board had assessed the disability as 50% after going through the complete profile of the applicant and the opinion of the classified specialists, as such the competent medical authority had no justification in making reassessment of disability without examining the patient, therefore, therefore, the applicant should be granted disability pension @ 50%.

5. Per contra, the learned counsel for the respondents submitted that Release Medical Board had regarded disability as aggravated by military service and assessed the same as 50% for 02 years, but the approving authority had accepted the disability as 30% for 02 years. The applicant's disability pension was rejected because it was considered as not attributable to 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). The claim of the applicant for grant of disability pension was rejected with an advice to prefer an appeal to the Appellate Committee on First Appeal, within a period of 06 months, in case was not satisfied with the decision of the competent authority. He did not file any appeal but forwarded petitions dated 28.09.2010 and 25.11.2010 which were suitably replied vide Signals Records letters dated 12.10.2010 and

14.01.2011, respectively. The applicant has filed the instant Original Application after a lapse of over 17 years.

6. Precise reason for rejection of the applicant's claim for disability pension is that the disability was considered not attributable to 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), 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.

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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."

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)."

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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."

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. 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."

10. 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."

11. 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".*
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> *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.*
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> *13. The National Institute of Mental Health, USA has described "schizophrenia" in the following words:*
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> > *"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."

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 pension 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. Medical board in this case has not given any reason for arriving at the conclusion that the applicant's disability is not attributable to but aggravated due to stress and strain of military service. There is no note of such disease or disability in the service record of the applicant at the time of acceptance in service. **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 service, 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. The competent medical authority i,e, Deputy Director Medical Services, Headquarters Madhya Pradesh, Bihar and Orissa Area, Jabalpur has reduced the percentage of disability from 50% to 30% but has not given reasoned opinion for reduction in the disability and the respondents have not produced any evidence to support this reduction. Also, Hon'ble **The Apex Court in case of Sukhvinder Singh vs. Union of India (supra)** has laid down that "……..*Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension".* Even if the disability is considered as 30%, the applicant deserves the benefit of rounding off of disability from 30% to 50% in the light of judgment and order passed by Hon'ble The Apex Court in case of **Union of India & others vs. Ram Avtar & ors Civil Appeal No. 418 of 2012 dated 10th December 2014**, and Government of India, Ministry of Defence letter dated 31.01.2001.

18. 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 @50% for 02 years and arrears of disability pension with interest @ 9%

per annum and he needs to be referred to Review Medical Board for reassessment of his disability.

19. In the result, O.A. No. 494 of 2012 is allowed. The impugned orders dated 31.10.1993 and 24.05.1995 are set aside. The applicant shall be entitled for disability pension @ 30% for 02 years, 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 cases 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 02 years. 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. 27.11.2009. The respondents are directed to pay arrears of aforesaid disability pension along with interest @ 9% per annum from three years prior to filing of O.A. i.e. 27.11.2009 till date of actual payment. The respondents are also 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. Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

20. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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Dated : Nov. 2015