**Court No.1**
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 95 of 2012**

Tuesday this the 20th day of October, 2015

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

Ex-L/Nk (Opr) Ravi Prakash Chaubey (Army No. 15772691-M) of 49 Air Defence Regiment, C/o 56 APO, aged about 32 years, son of Shri. Vishnu Deo Chaubey, resident of 6C/130, Gopesh Kunj, Vrindawan Yojana 1, Telibagh, District – Lucknow (U.P.), Pincode – 226002.

…….. Applicant

By Legal Practitioner Shri P.N. Chaturvedi, Advocate

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.

2. Officer-in-Charge, Army Air Defence (AAD) Records, Nasik Road Camp, (Maharastra).

3. Commanding Officer, 49 Air Defence Regiment, C/o 56 APO.

4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

…… Respondents

By Legal Practitioner Shri Ashutosh Kumar Srivastava, 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) Issue/pass an order or direction to the respondents to quash/set-aside the directions by the respondent No. 1 dated 04.09.2011 (Annexure No. A-1 (i)) because such directions are insulated from the real facts and the existing position of law and policy on the subject.*
>
> *(b) Issue/pass an order or direction of appropriate nature to the respondents to grant the disability pension to the applicant with effect from 17.06.2008 for life as the applicant is entitled to as per the factual matrix and the position of law on the subject.*
>
> *(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
>
> *(d) Allow this application with costs."*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 22.03.2000 and was invalided from service under the provision of Item III (iii) to Rule 13 (3) of Army Rule 1954 on 17.06.2008. The medical board opined that he was suffering from "EMOTIONALLY UNSTABLE PERSONALITY DISORDER (F 60.30) and SEVERE DEPRESSIVE EPISODE WITHOUT PSYCHOTIC SYMPTOMS WITH DELIBERATE SELF-HARM (F 32.2)" and assessed his disability @ 50% for life and considered it as neither attributable to nor aggravated by service. His claim for

the disability pension was rejected. The applicant did not appeal against the rejection of his claim for disability pension but forwarded a statutory complaint dated 28 February 2009 to the Chief of the Army Staff which was disposed of with remark that since the applicant had already been invalided out, no action can be taken. Subsequently, the applicant filed Writ Petition No. 39385 of 2009 before the Hon'ble High Court of Judicature at Allahabad from where it was transferred to this Bench and registered as Transferred Application No. 672 of 2010 and was disposed of with the direction to the Chief of the Army Staff to decide the statutory complaint of the applicant dated 28.02.2009. The statutory complaint of the applicant was considered by the Chief of the Army Staff and was rejected. Aggrieved, the applicant has filed present Original Application.

3. Heard Shri P.N. Chaturvedi, Learned Counsel for the applicant, Shri Ashutosh Kumar Srivastava, 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 was considered medically fit and there is no note of any disease or disability recorded at the time of his enrolment. During his eight years of service, he had been subjected to various annual medical boards and there had been no problem in his physical and mental conditions. He further submitted that the applicant was a sportsman and had secured first and second position on two occasions in the Western Command Championship in 10 Km Cycling. The applicant had excelled in his profession and other extra-curricular activities requiring physical prowess and mental robustness being sportsman. He added that the applicant has been given appreciation by General Officer Commanding 11 Corps twice by two different General Officers Commanding of the said Corps. Learned Counsel for the applicant reverted the claim of the respondents that the applicant had a disturbed childhood and added that disturbed childhood cannot wait for

eight years of service to manifest and that it was neither detected during enrolment nor was it detected during so many annual medical examinations of the applicant.

5. Per contra, the learned counsel for the respondents submitted that the applicant's claim for disability pension has been rejected because his disability was considered neither attributable to nor aggravated by 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 which clearly states that the pension cannot be granted to the individual who is invalided out from service on account of disability, which is attributable to and aggravated by military service. The applicant was suffering from "EMOTIONALLY UNSTABLE PERSONALITY DISORDER (F 60.30) and SEVERE DEPRESSIVE EPISODE WITHOUT PSYCHOTIC SYMPTOMS WITH DELIBERATE SELF-HARM (F 32.2)" due to constitutional disorder which is not connected with military service. He further submitted that applicant had a history of disturbed parentage, emotionally unstable childhood and adolescence. Learned Counsel for the respondents further submitted that the applicant's claim for disability pension had been rejected, because the disability was considered neither attributable to nor aggravated by service.

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 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) **<u>Pension Regulations for the Army 1961 (Part I)</u>**

***Para 173***. *Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is*

*attributable to or aggravated by army service and is assessed at 20 percent or over.*

*The question whether a disability is attributable to or aggravated by army service shall be determined under the regulations 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."*

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)."*

*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."*

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……..".*

9. 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 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. 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 Army in a fit medical condition and he suffered the disability during his service, it is, therefore, for the respondents to rebut the claim of the applicant.

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). 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.

11. In the instant case, there is no note of such disease or disability in the service record of the applicant at the time of enrolment in service and respondents have not been able to produce any document to prove that the disease existed before his enrolment. 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 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.

12. 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 life as recommended by the medical board from the date of discharge with interest at the rate of 9% per annum.

13. Thus in the result, the Original Application No. 95 of 2012 is allowed. The impugned order dated 04.09.2011 is set aside. The respondents are directed to grant disability pension to the applicant @ 50% for life from the date of discharge and pay arrears of disability pension with interest @ 9% per annum from the said date till the date of actual payment. Respondents are

directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

14. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated : Oct. 2015
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