Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No. 1048 of 2010

Tuesday this the 22nd day of September, 2015

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

Satnam Singh S/o Late Cheer Singh,
R/o Village - Pipaliya Ela
P.O. – Kaimri, Tehsil – Bilaspur,
District – Rampur

…….. Applicant

By Legal Practitioner Shri Shailendra Kumar Singh, Advocate

Versus

1. The Union of India through its Secretary,
   Ministry of Defence,
   New Delhi.

2. The Chief of the Army Staff,
   Army Head Quarters,
   New Delhi.

3. Record Officer, Artillery Records,
   Nasik Road Camp, Nasik.

4. The Controller of Defence Accounts (Pensions)
   Allahabad.

…… Respondents

By Legal Practitioner Shri Prakhar Kankan, Learned Counsel for the Central Government

ORDER

"Hon'ble Lt Gen Gyan Bhushan, Member (A)"

1. Initially, the applicant had filed writ petition No.77262 of 2005 before Hon'ble Allahabad High Court, which subsequently stood transferred to this Tribunal and registered as Transferred Application. The applicant has claimed the reliefs as under:-

> *"1(A) To quash or set aside the Respondent letter dated 05 Jun 1988 (Annexure III of TA).*
>
> *1(B) To quash or set aside the Govt of India, Min of Def letter dated 17 Mar 1989 (Annexure V of TA).*
>
> *1(C) To issue order or direction to the respondents to pay disability pension to the applicant from the date of his invalidment from service i.e. 08 Jan 1988.*
>
> *(2) Issue any other writ, order, or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
>
> *(3) Award the costs of the petition to the petitioner."*

2. The factual matrix of the case is that the applicant was enrolled on 14.08.1985 and was invalided out of service in medical category EEE (Psychology) with effect from 08.01.1988 under Army Rule 13 Item 3 (III) (iii). Medical board opined that his disease of "Acute Reaction to Stress" was neither attributable to nor aggravated by military service and assessed the disability as 30% for two years. The claim for disability pension was rejected vide order dated 15.06.1988 and subsequently, his first appeal was also rejected 17.03.1989. Thereafter, the applicant filed writ petition No.77262 of 2005, after a lapse of about 16 years of rejection of his first appeal.

Said writ petition has been transferred to this Tribunal and registered as T.A. and thus, it is before us for adjudication.

3. Heard Shri Shailendra Kumar Singh, 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 at the time of enrolment, the applicant was physically fit. Proper medical examination was conducted and no disease was found at the time of his joining the military service. There is no note of any disease at the time of his acceptance in military service. It is, therefore, apparent that the disease for which the applicant had been invalided out of service occurred during his military service, as such disability has to be considered as attributable to and aggravated by military service. Learned Counsel for the applicant placed reliance of judgment of Hon'ble the Apex Court in the case of **Dharamvir Singh vs. Union of India & Others** reported in (2013) 7 SCC 316, and the subsequent judgment of the Hon'ble the Apex Court in the case of **Sukhvinder Singh Vs. Union of India** reported in (2014) STPL (WEF) 468 SC. Learned Counsel for the applicant also made an oral submission that, though not contained in the pleadings, as per Government Order dated 31.01.2001, the disability pension be rounded off to 50%.

5. Per contra, the Learned Counsel for the respondents submitted that duly constituted medical board had assessed the

disability as neither attributable to nor aggravated by military service. Since the applicant was not fulfilling the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations, his claim for disability pension was rejected with an advice that in case he was not satisfied, he might prefer appeal. The appeal filed by the applicant against rejection of his claim for disability pension was rejected vide order dated 17.03.1989 (Annexure-V to the T.A.). The applicant's claim for disability pension has been rightly rejected by the competent authority as per existing policy. Precise reason for rejection of disability pension is that the disability was considered neither attributable to nor aggravated by military 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 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 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."

7. 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)."

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"31. In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In

fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows :-

"(d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof. ***YES*** *Disability is not related to military service."*

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33. In spite of the aforesaid provisions, the pension sanctioning authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rule 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

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35. In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be

liable to pay interest as per the order passed by the learned Single Judge. No costs."

8. In **Sukhvinder Singh Vs. Union of India (supra),** the Hon'ble 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…….".

9. In the case of **Veer Pal Singh vs. Ministry of Defence** reported in (2013) 8 SCC 83 in Paras 11,12,13,17,18 and 19 of the judgment, 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 bahaviour 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.

10. In **Union of India and Ors vs Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014** in which Hon'ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant is excerpted below:

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

(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

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

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

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

11. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of Hon'ble The Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was discharged or invalided out of service on account of his being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability, would also be entitled to the benefit of rounding off.

12. In the case of **Shiv Das 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 the instant case, 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. Since the applicant suffered the disease due to service conditions, 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 and was invalided out in low medical category. We also converge to the view that, in

view of law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh (supra)**, in the interest of justice, 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. All issues have now been settled, which are applicable or may be raised by the respondents in this case, by the judgments of the Hon'ble The Apex Court referred to above.

14. In the case in hand, medical board has not given any reasoned opinion on the basis of which they have concluded that the applicant's disability is neither attributable to nor aggravated by the service conditions. 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.

15. Thus, in the result, the T.A. No. 1048 of 2010 succeeds and is allowed. The applicant is entitled to grant of disability pension @ 30% for two years. Impugned orders dated 05.06.1988 and 17.03.1989 (Annexures-III and V to the T.A.) are set aside. The respondents are directed to grant disability pension to the

applicant @ 30% for two years and pay arrears of disability pension with interest @ 9% per annum from three years prior to the filing of writ petition in the Hon'ble High Court, i.e. 13.12.2005, till the date of actual payment. In case the Applicant represents, the respondents shall also consider for rounding off of disability pension @ 50% for two years 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 also directed to refer the case to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. 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.

16. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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Dated : September 22, 2015