

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No. 1188 of 2010

Wednesday this the 23rd day of September, 2015

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

No.120354-H Ex-ME-II
Vijay Kumar Rathi
Shri R.P. Rathi,
Village & Post Office Goela,
Tehsil - Budhana
District – Muzaffarnagar

..... Applicant

By Legal Practitioner Col. (Retd.) Ashok Kumar & Shri Rohit
Kumar, Advocate

Versus

1. Union of India, through Secretary
Ministry of Defence (Navy)
New Delhi.
2. Chief of the Naval Staff,
Naval Head Quarter, New Delhi.
3. Principal Controller of Defence Accounts (Pensions)
Gts Section (Navy Cell)
Draupadi Ghat,
Allahabad.
4. Commanding Officer.
5. INS
CIRCARS
Vishakhapatnam.

..... Respondents

By Legal Practitioner Shri D.S. Tiwari, Learned Counsel for the
Central Government

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. Initially, the applicant had filed writ petition No.49866 of 2003 in the Hon’ble High Court of Judicature at Allahabad. Subsequently, it was transferred to this Tribunal and registered as T.A. The applicant has claimed the reliefs as under:-

- “(a) Issue a writ order or direction commanding the respondent No.3 to grant Disability Pension to the Petitioner right from the date of his medically boarding out.*
- (b) Issue a writ order or direction in the nature of certiorari commencing the impugned denial of disability pension and rejection of the Second Appeal of the Petitioner dated 13 August 2003 and quashing the same with all the consequential benefits to the Petitioner with Penal Interest.*
- (c) Issue any other writ order or direction considered expedient and in the interest of justice and equity.*
- (d) Award Cost.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Navy on 02.08.1986 as Sailor and was invalided out of service with effect from 23.04.1999 in low medical category. His disability was assessed as 20% for two years and it was considered as neither attributable to nor aggravated by naval service. The claim for disability pension was rejected vide order dated 09.06.2000 and subsequently, his first and second appeals were also rejected vide orders dated 05.02.2002 and 13.08.2003, respectively. Thereafter, the

applicant filed writ petition, which stood transferred to this Tribunal and registered as T.A. and thus, it is before us for adjudication.

3. Heard Col (Retd) Ashok Kumar and Shri Rohit Kumar, Learned Counsel for the applicant, Shri D.S. Tiwari, 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 in sound physical and mental condition. At the time of enrollment, he had undergone physical and medical tests and was found fit in all respects. He also underwent periodical medical check ups during his service and was always found fit till 11.05.1998, the date on which disease of 'Depression NES' was diagnosed for the first time. He further submitted that there was no family history of this disease. Since the applicant was enrolled as medically fit person and there is no record of any ailment or disease at the time of enrollment, the disability suffered by the applicant has to be considered as attributable to and aggravated by naval service. Learned Counsel for the applicant placed reliance on 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 submitted that though he has not made any mention in the

pleadings, but the disability of the applicant should be rounded off to 50%, as per recent policy and in the light of the order passed by Hon'ble The Apex Court in the case of **Union of India and Ors vs Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014.**

5. Per contra, the Learned Counsel for the respondents submitted that the disability pension of the applicant was rejected by the P.C.D.A. (P), Allahabad, because the disability was considered neither attributable to nor aggravated by naval service. However, he was sanctioned an invalid gratuity. The applicant was intimated regarding rejection of disability and was given a chance to appeal against the decision, within six months, which he availed, but the appeal was rejected. Subsequently, his second appeal was also rejected.

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 naval service.

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 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.

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 invalidated 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 instant case, we find that the applicant had been enrolled in the Indian Navy 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 invalidated 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.

13. 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 applicant is entitled to the relief as per the above judgments of the Hon'ble the Apex Court.

14. 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 order passed by the respondents deserve to be set aside and the applicant is found to be entitled to disability pension @20% for two years as recommended by the Medical Board with interest at the rate of 9% per annum. In view of the law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh (Supra)**, we are of the view that in the interest of justice, the case of applicant be referred to the Re-Survey Medical Board

for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any.

15. Thus, in the result, the T.A. No. 1188 of 2010 succeeds and is allowed. The applicant is entitled to grant of disability pension @ 20% for two years. Impugned orders dated 13.08.2003 is set aside. The respondents are directed to grant disability pension to the applicant @ 20% for two years 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% 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 , 2015