

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No. 126 of 2011

Friday this the 18th day of September, 2015

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

Santosh Kumar Sharma
R/o Vill & P O Pala (ASI)
Distt. Aligarh (UP)-202001

..... Applicant

By Legal Practitioner Shri D.S. Kauntae, Advocate

Versus

1. The Union of India, Through Secretary,
Ministry of Defence, South Block,
DHQ P.O. New Delhi-110011.
2. The Chief of Army Staff
Army Headquarter, south Block,
DHQ P.O. New Delhi-110011.
3. Officer-in-Charge
EME Records
PIN – 900453
C/O 56 APO.
4. PCDA (P)
Draupadi Ghat
Allahabad (UP)

..... Respondents

By Legal Practitioner Shri Mukund Tewari, Learned
Counsel for the Central Government

ORDER

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

1. The instant Transferred Application had been initially filed on behalf of the applicant as O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 before the Principal Bench, Armed forces Tribunal, New Delhi, from where it has been transferred to this Bench and registered as Transferred Application. The applicant has claimed the reliefs as under:-

- “(a) Set aside the opinion of the Appeal Medical Board dated 17 Nov 2008 held at Base Hospital Delhi Cantt being arbitrary, perverse and against the provisions of law.*
- (b) Set aside the impugned order dated 31 Jan 2011 passed by Officer-in-Charge EME Records being arbitrary and bad in law.*
- (c) Direct the respondents to grant disability pension to the applicant wef 30 Oct 2001, with further direction to grant interest at the rate of 12% on the arrears of disability pension.*
- (d) Any other order or relief which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case may also be granted to the petitioner.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 29.11.1985 and was invalided out of service with effect from 29.10.2001

(afternoon) on being placed in low medical category EEE (Permanent) due to his disability "PARANOID SCHIZOPHERNIA (295,V-67)". The medical board assessed the disability of the applicant as 60% for five years, but considered the same as neither attributable to nor aggravated by military service. His claim for disability pension was rejected and subsequently, the first appeal and second appeal also met with the same fate. Thereafter, the applicant filed Civil Misc. Writ petition (C) No.420 of 2008 before Hon'ble Delhi High Court. The Hon'ble High court vide its judgment dated 30.04.2008 disposed of the writ petition with direction to the respondents to hold appeal medical board of the applicant. In compliance thereof, the appeal medical board was held at Base Hospital Delhi Cantt. The appeal medical board assessed the disability of the applicant as 30% for life and considered it as neither attributable to nor aggravated by military service.

3. Heard Shri D.S. Kauntae, Learned Counsel for the Applicant, Shri Mukund Tewari, Learned Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that the applicant was found medically fit in all respects and no note of any disease was made at the time of his acceptance

for the Army service. Onset of disease as recorded in the applicant's medical documents is November, 2000, i.e., 15 years after his enrollment in the army service. He submitted that the classified specialist had stated that the applicant had no past psychiatric history prior to 2000 A.D. and no genetic loading. Thus, it is evident that the invaliding disease arose during service and it did not exist before joining the army service. He further submitted that the applicant's claim for disability pension was rejected because the medical board considered the disability as neither attributable to nor aggravated by military service. Since there is no note of such a disease or disability in the service record of the applicant at the time of acceptance in service, as such this has to be considered as attributable to and aggravated by service.

5. The Applicant's Counsel placed reliance on the 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 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% for life.

6. Per contra Learned Counsel for the Respondents submitted that the applicant was invalided out of service in medical category EEE (Permanent) due to his disability "PARANOID SCHIZOPHERNIA (295,V-67)". The medical board had assessed the disability @ 60% for five years but it was considered neither attributable to nor aggravated by military service. Since the applicant was not meeting the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations for the Army, his claim was rightly rejected by the competent authority. First and second appeals of the applicant against rejection of disability pension were also rejected. Thereafter the applicant had filed a Writ Petition (C) No. 420 of 2008 before the Hon'ble Delhi High Court. Hon'ble Delhi High Court disposed of the writ petition with direction to the respondents to hold appeal medical board of the applicant. The appeal medical board assessed the disability as 30% for life, but it considered the same as neither attributable to nor aggravated by military service, and that is why the applicant's claim for grant of disability pension was rightly rejected by the competent authority.

7. Precise submission, on which the claim of the applicant for disability pension was rejected is that the disability was considered neither attributable to nor aggravated by military service.

8. 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."*

9. 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.”

10. 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.....”.

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

Tribunal Benches were nodded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of the Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was invalided out/discharged from 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.

13. Having given due considerations to the rival submissions made on behalf of the parties' Learned Counsel, we find that the applicant had been enrolled in the Indian Army in a fit medical condition and he suffered the disability during his service period, and therefore, in view of the judgment of the Hon'ble The Apex Court in the case of **Dharmvir Singh Vs. Union of India & others** (supra) and the subsequent judgment of the Hon'ble The Apex Court in the case of **Sukhvinder Singh Vs. Union of India** (supra), a presumption has to be drawn in favour of the applicant, who is discharged or invalided in low medical

category. 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 in the service and was discharged or invalided in low medical category. All issues have now been settled, which are applicable or may be raised by the respondents in this case, by the Hon'ble The Apex Court referred to above.

14. In the instant case, medical board has not given any reasoned opinion, on the basis of which the medical board has assessed that the disease is neither attributable to nor aggravated by the service conditions. Conclusion without giving detailed reasons cannot be considered a valid medical opinion. Also, 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. In view of the facts, circumstances and case laws discussed above, we are of the considered view that the applicant is entitled to grant of disability pension @ 30% for life. The T.A. No. 126 of 2011 is allowed. The impugned orders dated 17.11.2008 and 31.01.2011 are set aside. The respondents are directed to grant disability pension to the applicant @ 30% for life from the date of discharge and pay arrears of disability pension with interest @ 9% per annum from that date till the date of actual payment. In case the applicant represents, the respondents shall also consider for rounding off of disability pension @ 50% as per policy and in the light of the order passed by Hon'ble The Apex Court in the case of Union of India vs. Ram Avtar (supra). The respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.

16. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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September 18, 2015

