

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transferred Application No. 837 of 2010

Thursday this the 1st day of October, 2015

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

Dinesh Singh Kushwaha
son of Raja Ram Kushwaha Resident of
Plot No.2A Virat Nagar Ahirwan
G.T. Road Herjinder Nagar, Kanpur.

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, through Secretary,
Ministry of Defence. New Delhi.
2. Chief of Naval Staff,
Head Quarters, New Delhi.
3. Controller of Defence Account
(Pension) Allahabad.
4. The Controller of Defence Account
(Navy) Pension Cell Mumbai.
5. Bureau of Sailors, Cheetah Camp
Mankhurd Mumbai.
6. Commanding Officer, Indian Navy
Service, Virat Mumbai.

..... 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.54539 of 2004 before Hon’ble High Court of Judicature at Allahabad, from where it has been transferred to this Bench of the Armed forces Tribunal and registered as Transferred Application. The applicant has claimed the reliefs as under:-

- “i) Issue writ order or direction in the nature of certiorari calling upon the records of the petitioner and quash the rejection order 29 May, 2003.*
- ii) Issue writ order or direction in the nature of mandamus directing the respondent to pay the arrears of service pension and disability pension of the petitioner from the date of his discharge (i.e.) 25.04.2001 and to pay the service pension and disability pension month to month when ever becomes due.*
- ii (a) Issue writ order or direction in the nature of certiorari to quash the appellate order dt. 27.02.2005 (Annexure 1 to this application) passed by first appellate Board/authority, (respondent No. 2) and allow this application by granting the disability pension to the petitioner.*
- iii) Issue writ order or direction in the nature of mandamus directing the respondent no. 2 to decide the appeal of the petitioner dated 17.07.2003 under letter dated 18.07.2003 (Annexure No. 6 and 7) respectively.*

- iv) Issue writ order or direction in any nature, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*
- v) To award cost of the petition to the petitioner."*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Navy on 10.08.1991 and was invalided out of service with effect from 22.04.2001 in medical category S5A5 due to disease "**Neurosis-ICD300 and Seizure Disorder-ICD 345**". The medical board held in February 2001 prior to his invalidment assessed the disability of the applicant for 'Neurosis' at 20% and for 'Seizure Disorder' at 15-19% and the composite assessment of both the disabilities was assessed as 30% for two years. The medical board also opined that the disease were constitutional, as such the disability was considered neither attributable to nor aggravated by military service. The applicant's claim for disability pension was rejected vide letter dated 29.05.2003. Subsequently, his first appeal was rejected vide letter dated 24.02.2005 with the advice that he might prefer second appeal and final appeal to the Defence Minister's Appellate committee on pension within 12 months. Thereafter the applicant had filed Writ Petition No. 54539 of 2004 before the Hon'ble High Court of Judicature

at Allahabad, which came to be transferred to this Tribunal and registered as T.A.

3. Heard Shri R. Chandra, 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 the applicant was enrolled in the Indian Navy after thorough medical check-up and he was considered medically fit for joining the Navy and no disease or disability was noticed at that time. He was looking after steam boiler regularly; as such his nature of duty was very tough, where he had to perform under temperature of about 50 to 60 degree Celsius. Such high temperature is injurious for health. He always felt heaviness in his head at his duty and head-ache after returning from his duties and he was compelled to take medicine for relief. Subsequently, his condition deteriorated and he was sent for treatment to INS Virat, where it was diagnosed that he was suffering from the disease Neurosis, CNS (investigation) Seizure and he was down graded to medical category S3A2 in December, 1997 and since then he was kept under medical observation for approximately 04 years. However, after continuous treatment, there was no improvement, as such he was kept

in medical category S5A5 and was recommended to be invalided out of service.

5. Learned counsel for the applicant submitted that the applicant served the Navy for 09 years, 08 months and 15 days; he was not allowed to complete 10 years' service and was invalided out of service, which debarred him from regular pension, for which he would have been entitled had he been invalided three months' later. It is evident that the disease caused to the applicant was due to rigorous nature of service, as such his disability ought to have been considered as attributable to and aggravated by naval service, therefore, the applicant is entitled to get the disability pension. 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, therefore, this has to be considered as attributable to and aggravated by naval service.

6. 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.

7. Per contra Learned Counsel for the Respondents submitted that the applicant was invalided out of service in medical category S5A5 due to disease “**Neurosis –ICD300 and Seizure Disorder – ICD 345**”. The medical board had assessed the composite disability for both the disease @ 30% for two 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 78 of Navy (Pension) Regulations, 1964, as the applicant had rendered only 09 years 08 months and 12 days’ service, therefore, his claim was rightly rejected by the competent authority. Learned Counsel for the respondents further submitted that in terms of Regulation 101 of Navy (Pension) Regulations, disability pension has to be granted to a person, who is invalid out of service on account of disability, which arises in the course of employment. First appeal of the applicant against rejection of disability pension was also rejected. Thereafter the applicant had filed a Writ Petition No. 54539

of 2004 before the Hon'ble High Court of Judicature at Allahabad, which came to be transferred to this Tribunal and registered as T.A. The medical board had assessed the composite disability as 30% for two years, but it considered the same as neither attributable to nor aggravated by naval service, and that is why the applicant's claim for grant of disability pension was rightly rejected by the competent authority.

8. 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.

9. Before dealing with the rival submissions, it would be appropriate to examine the relevant Rules and Regulations on the point. Relevant portion of the Entitlement Rules for Casualty Pension Award, 1982 are reproduced below:-

(a) **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 invalidated 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.”

10. 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.”*

11. **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.....”.

12. 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".

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.”

13. 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.”

14. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were noddled 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.

15. 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 naval service, as such, 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 are also of the view that, keeping in view 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.

16. In the case in hand, medical board has not given any reason in support of its 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 joining Indian Navy. 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.

17. 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 found to be entitled to disability pension @30% 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.

18. Thus, in the result, the T.A. No. 837 of 2010 succeeds and is allowed. The applicant is entitled to grant of disability pension @ 30% for two years. Impugned orders dated 29.05.2003 and 27.02.2005 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 the date he was invalided out of service 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.

19. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

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Dated : October , 2015