

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO. 1****O.A. No. 42 of 2016****Friday, this the 27th day of October, 2017****"Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No. 7239536X Ex. Swr Girish Chandra resident of Village Nagla Hira, Post Office Asaltabad, Police Station Vishnugarh, Tehsil - Chhibramau Dsitric - Kanoj (U.P.) **-Applicant**

Ld. Counsel appeared - Shri Veer Raghav Chaubey, Advocate for the Applicant

Versus

1. The Union of India through the Chief of Army Staff, Army Headquarter, R.K.Puram, New Delhi.
2. The commanding Officer, 41, Military Veterinary Hospital, Class-II Dehradun.
3. P.C.D.A (P) Draupadi Ghat, Allahabad.
4. The Record Officer, Remount and Veterinary Corps Records, Post Box No.111, Meerut Cantt-250001. **- Respondents**

Ld. Counsel appeared for the Respondents -Dr Shailendra Sharma Atal, Advocate Sr. CGSC

Assisted by -Maj Salen Xaxa, OIC Legal Cell

ORDER**“(Per Hon’ble Air Marshal BBP Sinha, Member (A))”**

1. Present Petition under section 14 of the Armed Forces Tribunal Act has been preferred by the Applicant seeking the relief of grant of disability pension attended with further relief of setting aside the order as contained in the letter dated 27.02.2015.

2. The facts shorn of unnecessary details are that the Applicant was enrolled in the Indian Army 04.01.1985 and was discharged on 13.08.1991 on account of being placed in medical category BEE (P) under Item III (v) to Rule 13, Army Rules 1954. At the time of discharge, the Applicant had rendered six years and 174 days of military service. The disabilities which the Applicant suffered at the time of discharge were (a) NEUROSIS with 20% opening it due to anxiety for loss of sensation in his limbs and (b) Psoriasis with 30%. The disabilities of the Applicant were opined to be neither attributable to nor aggravated by the military service by the Release Medical Board. It is alleged that the papers after being processed were sent to the PCDA (P) for release of

disability pension but the same was rejected vide order dated 20.07.1992. The Applicant then filed the Ist Appeal which was also rejected vide order dated Nov 1993. The Applicant then approached the Ministry of Defence vide Application dated 29.01.2006 followed by complaint by Smt Asha Devi through CPGRAMS which, it is alleged, were duly replied.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents and perused the materials on record.

4. The only ground urged before us is that the disability pension was denied to the Applicant as his disabilities were assessed by the Release Medical Board as neither attributable to nor aggravated by Military service.

5. The learned counsel for the Applicant in connection with his submission relied upon various decisions including the decision of the Apex Court in ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, Sukhvinder ***Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh***

Titaria, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264.

6. The learned counsel for the respondents, on the other hand, propped up the contention that the Applicant was rightly denied the disability pension as the disabilities were found to be constitutional and the same were opined to be neither attributable to nor aggravated by the military service.

7. In connection with the above plea, we would like to refer to the decisions of Hon'ble The Apex Court as cited by Learned Counsel for the Petitioner. The first decision is **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**, in which Hon'ble The Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any

reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

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 Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. The above judgment has been constantly followed and further explored by the Supreme Court in Union of India and others v. Rajbir Singh (CA No. 2904 of 2011 decided on 13.2.2015); Union of India and others v. Manjit Singh (CA No. 4357-58 of 2015 (arising out of SLP (C) No. 13732-33 of 2015) decided on 12.5.2015; Union of India v. Angad Singh (CA No. 2208 of 2011 decided on 24.2.2015); KJS Butter v. Union of India (CA No. 5591 of 2006 decided on 31.3.2011; Ex. Hav Mani Ram Bharia v. Union of India and others, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; Satwinder Singh v. Union of India OA 621 of 2014 Bharat Kumar Vs UOI & Ors.; OA 1235 of 2014 Hoshiar Singh Vs UOI & Ors. and 480 of 2015 Jasbir Singh Vs UOI & Ors. 18 and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016.

9. We also feel called to refer to chapter II of **the 'Guide to Medical Officers (Military Pensions) 2002'** relates to Entitlement and General Principles. Para 7 of the said Chapter talks of evidentiary value of medical records at the commencement of service. For proper appreciation of the controversy involved in this case, the said paragraph is reproduced below:

"7. Evidentiary value is attached to the record of a member's condition at the time of commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record an entry in service was due to a non disclosure of the essential facts by the member, e.g., pre-enrolment history of an injury or disease like epilepsy, mental disorder etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

X x x x x x x x x x
 (f) Disease which have periodic attacks, e.g. Bronchial Asthma, Epilepsy, CSOM etc."

10. The second limb of the argument is with reference to the medical board holding the disease as a constitutional/endogenous disorder. We note that this has been recently gone into by the Hon"ble Supreme Court. In Civil Appeal 1695 of 2016, Sukhvinder Singh Vs UOI and Others decided on 11.02.2016, at Pages 13 and 14, it noted as under:-

In the light of the above, there is no gain saying that a presumption arises in favour of the appellant being fit on the date of his recruitment and the disease subsequently detected being attributable to military service. That presumption is no doubt rebuttable. The question is whether the respondents have been able to rebut the same. Reliance by the learned counsel for the respondents upon the report of the medical board to the effect that the disease is constitutional does not in our view constitute sufficient rebuttal of the presumption.

Be that as it may the Medical Board simply opined that the disease is constitutional. There is no explanation or justification leave alone any cogent analysis of the cause or the basis on which the said opinion is recorded. Simply declaring that the disease is constitutional would not in the facts and circumstances of the case suffice.”

11. We have traversed upon the relevant medical papers and from a punctilious reading of the medical papers and other allied papers, it would clearly transpire that no note of any disease had been recorded at the time of his entry in the Military service. The respondents failed to bring on record any document to suggest that the Applicant was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature.

12. The Learned Counsel for the Respondents also called in question the payment of arrears from the date of discharge submitting that it should be restricted to three years prior to

filing of the Original Application on the ground of delay and laches. The delay it is submitted is stated to be about 11 years, 8 months and 28 days in filing the Original Application. The question of delay was reckoned with and the delay was condoned vide order of this Court dated 9.4.2014. Even otherwise, we have considered this submission in the light of the various decisions of Hon'ble The Apex Court and looking into the services rendered by the Applicant for the Nation and regard being had to the facts and circumstances of the case and also looking into the nature of the case, we are of the considered view that the Applicant is entitled to arrears to be paid with interest at the rate of 9% per annum from the date of discharge till the date of actual payment.

13. In the instant case, the composite disability of the Applicant works out to be 50%. In connection with it, circular dated 31.01.2001 may be referred to. Relevant to the present cases are Paras 2.1 and 7.2, which are reproduced below:-

"2.1 The provisions of this letter shall apply to the Armed Forces personnel who were in service on 1.1.1996 or joined/join service thereafter unless otherwise specified in this letter. xxxx xxxx xxxx xxxx xxxx 7.2 Where an Armed Forced personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purpose of computing the disability element:-

Percentage of disability as assessed by the Invaliding Medical Board	Percentage to be reckoned for computing of disability element.
Less than 50	50
Between 50 to 75	75
Between 76 and 100	100

14. It would thus appear that looking to the composite disability of the Applicant which is 50%, the disability of the Applicant if rounded off would work out to be 75%. Thus the Applicant would be entitled to disability pension to the extent of 75%.

ORDER

15. Thus as a result of foregoing discussion, the O.A is allowed and the impugned order as contained in Annexure No 6 to the OA is set aside. The Applicant is held entitled to disability pension to the extent of 50% which is rounded off to 75%. . The Respondents are also directed to pay arrears of aforesaid disability pension from the date of discharge till the date of actual payment. The Respondents are directed to give effect to the order within six months from the date of receipt of a certified copy of this order failing which the Petitioner shall be entitled to interest at the rate of 10% per annum.

16. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Date: October, ,2017

MH/-