RESERVED

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 13 of 2016

Wednesday, this the 08th day of November, 2017

"Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP, Sinha, Member (A)"

No. 15465688L Ex- DFR Akash Singh S/o Chhote Singh R/o Power House Road Near Chandel Cold Store P.O. – Mainpuri, Tehsil & District Mainpuri (U.P.) 205001. ….Applicant

Ld. Counsel for the Applicant : **Shri P.K. Shukla, Advocate** (Counsel for the applicant)

Versus

1. Union of India through the Secretary, Ministry of Defence, 101 South Block, New Delhi – 110011.

2. Additional Director General of personnel Services/AG's Branch IHQ of MoD(Army) C/o 56 APO Pin – 900256.

3. The Record Officer Armoured Corps Records C/o 56 APO.

4. The PCDA(P), Draupadi Ghat, Allahabad.**…. …Respondents**

Ld. Counsel for the Respondents. **Shri Amit Jaiswal, Advocate,** Addl.Central Govt Standing Counsel.

Assisted by : **Maj Piyush Thakran**, OIC Legal Cell.

ORDER

"Per Hon'ble Air Marshal BBP Sinha, Member (A)"

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for the reliefs of setting aside the impugned orders dated 21.06.2014 and 30.07.2015/09.09.2015 and further for grant of disability pension.

2. The facts draped in brevity are that the Applicant was enrolled in the Indian Army on 28.09.1994 and was discharged from service on 30.04.2014 under Rule 13 (3) Item 3 (a) (1) of the Army Rules, 1954 on account of being in low medical category after rendering more than 19 years of service. The Applicant was discharged on the recommendation of Review Medical Board which assessed his disability initially as 30% for life but subsequently, it was erased and substituted by the expression 'Nil'. The disability was also opined to be neither attributable to nor aggravated by the military service. The claim for disability pension was rejected by the PCDA (P) Allahabad vide order dated 21.06.2014 and the first appeal preferred against the order rejecting the claim was also rejected vide order dated 30.07.2015/09.09.2015. It is in the above backdrop that the present O.A has been filed.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents assisted by the OIC Legal Cell.

4. The crux of the submissions advanced by learned counsel for the Applicant is that initially the Applicant's disability was assessed as 30% but from a close scrutiny it would transpire that it was erased and in its place, expression 'nil' was written. The learned counsel further submits that by catena of decisions of the Apex Court, the law is very well settled and leaves no manner of doubt that evenif the disability is nil, it would be taken to be 20% and after being rounded off, it would come to 50%. In this connection he referred to the decisions of the Apex Court in Sukhvinder Singh Vs Union of India reported in (2014) STPL (WEF) 468 SC in which the Apex Court held that wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent and further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

5. Per contra, learned counsel for the respondents raised thread-bare arguments that since the disability of the Applicant was opined to be neither attributable to nor aggravated by military service in terms of para 47 of Chapter 6th, Guide to medical officer, 2002, amendment

2008, he was rightly denied the disability element in terms of para 173 of Pension Regulations for Army 1961 (Part-1). The further threadbare argument raised was that as per Para 173 of Pension Regulation for the Army 1961 (Part -1) disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service in non battle casualty and is assessed at 20% or over. He further referred to the decision of Apex Court in Civil Appeal No 1837 of 2009 rendered on 23.05.2012 in which it was held that opinion of the Medical Board should be given primacy in deciding cases of disability pension and court should not grant such pension brushing aside the opinion of the Medical Board further referring to the observation that in case the Medical Authority records the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore such a finding for the reason that medical Board is specialized authority composed of expert Medical Doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual.

6. We are pained to notice that all the above arguments have been brought to bear by the learned counsel for the respondents in utter disregard of the decisions of the Apex

Court in **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316,** rendered on 02.07.2013 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 invalided 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).
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> 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)].
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> 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).
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> 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]
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> 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)].
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> 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)."

7. 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.

8. In the case of **Union of India and Ors vs Angad Singh Titaria reported in (2015) 42 SCD 417**, Hon'ble The Apex Court dealt with the controversy of an Air Force Personnel and taking into consideration the decisions in Rajbir Singh and Dharamvir Singh Infra), made following observations.

> *"15. Recently, this Court in a similar case (**Union of India &Anr.** Vs. **Rajbir Singh** (Civil Appeal Nos. 2904 of 2011 etc.) decided on 13th February, 2015) after considering **Dharamvir Singh** (supra) and upholding the decision of the Tribunal granting disability pension to the claimants, observed:*

"... The essence of the rules, as seen earlier, is that

a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry.

More importantly,

in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service.

This necessarily implies that

no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.

Last but not the least is the fact that

the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces.

There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service.

The burden to establish such a disconnect would lie heavily upon the employer

for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it.

A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same " .

16. *Here in the case on hand, the respondent was rendered ineligible for further promotion and thereby invalidated on the ground of his being in medical category A4 G4 (Permanent). In the absence of any specific note on record as to the respondent suffering from any disease prior to his joining the service, he is presumed to have been in sound physical and mental condition while entering service as per Rule 5(a) of the Entitlement Rules. The fact remains that the respondent was denied promotion on medical grounds and the deterioration in his health shall therefore be presumed to have been caused due to service in the light of Rule 5(b) of the Entitlement Rules. Moreover, simply recording a conclusion that the disability was not attributable to service, without giving a reason as to why the diseases are not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In such circumstances, we cannot uphold the view taken by the Medical Board.*

17. *Considering the facts and circumstances of the case in the light of above discussed Rules and Regulations as well as settled principles of law enshrined by this Court in* ***Dharamvir Singh*** *Vs.* ***Union of India &Ors.*** *(supra) and reiterated in* ***Union of India & Anr.*** *Vs.* ***Rajbir***

Singh *(supra), we are of the considered opinion that the Tribunal had not committed any error in awarding disability pension to the respondent for 60% disability from the date of his discharge along with 10% p.a. interest on the arrears. For all the reasons stated above, we do not find any merit in this appeal and the same stands dismissed without any order as to costs."*

9. 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 no reasons have been assigned how the disability was found by the Board to be not attributable to or aggravated by the Military service.

10. Further there is no explanation forthcoming how the assessment which was earlier noted to be 30% for life was reduced to nil by erasing. We called for original documents in order to ascertain the veracity of the medical report. To our dismay, in the original document, the assessment of 30% for life was erased and was substituted by expression nil. In the facts and circumstances of the case and regard being had to the fact that no explanation is forthcoming for erasing the initial assessment of 30% for life, we have no option except to converge to the conclusion that the disability of the Applicant was assessed as 30% for life.

11. In the case of Sukhvinder Singh Vs Union of India the Apex Court clearly held that wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent and further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension. There is no denying of the fact that the Applicant was invalidated out of service in shape 1 (P). In the circumstances, regard being had to the decision of the Apex Court in Sukhvinder Singh vs Union of India (supra), we converge to the conclusion that evenif it be assumed that the assessment of disability by the Medical Board was nil, it would perforce be assumed to be 20% and above and once, it is assumed to be 20%, it has to be rounded off to 50%.

ORDER

12. Thus as a result of foregoing discussion, the O.A is allowed and the impugned orders dated 21.06.2014 and 30.07.2015/09.09.2015 are set aside. The Applicant is held entitled to disability pension to the extent of 30% for life which is rounded off to 50%. 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.

13. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: November, 2017
MH/-