RESERVED

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 20 of 2016

Thursday, this the 23rd day of November, 2017

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

Achal Singh S/o Shri Gopi Singh, R/o Vill-Joinpura, PO Chaubia, Distt -Etawah**.** **…… Petitioner**

Ld. Counsel for the Petitioner : **Shri Dharmendra Singh Advocate** (Counsel for the Petitioner)

Versus

1. Union of India, through Secretary, Chief of Army Staff, South Block (Sena Bhawan) New Delhi.

2. Officer In Charge Records, Brigade of Guards Kamtee-441000.

3. Commanding Officer 9th Bn Brigade of Guards (Mech) C/o 56 APO.

……Respondents

Ld. Counsel for the: Respondents. S**hri V.P.S. Vats, Advocate,** Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa**, OIC Legal Cell.

Order

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

1. The T.A aforesaid was initially filed as Writ Petition No. 43713 of 2002 in the High Court of Judicature at Allahabad by the petitioner which was subsequently transferred to this Tribunal under section 34 of the Armed Forces Tribunal Act 2007. On receipt of record in this Tribunal, the aforesaid Writ Petition was renumbered as T.A. No 20 of 2016.

2. The relief sought was for quashing the impugned order dated 29.06.2002 whereby the petitioner was discharged from the Army Service as undesirable soldier along with the relief of grant of service pension as well as disability pension. In this Tribunal, the aforesaid petition was amended to the extent that a further relief was sought to set aside the order whereby disability pension was rejected.

3. The facts bereft of unnecessary details are that the petitioner was enrolled in the Indian Army on 28.04.1983. On account of being in low medical category BEE (P), the petitioner was permitted to continue in Army Service in sheltered appointment from time to time till 31.01.1998. He was discharged from service on 31.01.1998 on account of the policy on dealing with undesirable and inefficient soldiers. Before discharge, he was subjected to medical examination by Release Medical Board which assessed his disability as

20% for five years but at the same time, opined it to be neither attributable to nor aggravated(NANA) by military service and it was diagnosed to be constitutional. The total service rendered by the petitioner was 14 years and 279 days. However due to frequent over stayal of leave, his qualifying service for pension adds up to 14 years only.

4. In the instant case, the petitioner was denied the service pension as well as disability pension as he was discharged under Army Rule 13 (3) Item III (v) of Army Rule 1954 as undesirable and inefficient soldier who did not fulfil the terms of engagement of 15 years.

5. Learned counsel for the respondents has averred in the counter affidavit that the petitioner was afflicted with GENERALISED SEIZURE (780) V-67 since 04.07.1987 and he was downgraded to medical category CEE (T) for six months by the Medical Board held on 17.06.1986. It is also averred that the petitioner served the Army in low medical category i.e BEE (P) due to Fracture neck of 22nd Metacarapal (Rt) and Generalised Seizure V-67 between 17.06.1986 to 31.01.1998. It is also averred that during the service in Army the petitioner was awarded as many as six punishments including four red ink entries. The punishments were awarded to the petitioner in the year 1990, 1992, 1995, 1996 and 1997. All the punishments awarded were on account of overstaying the sanctioned leave.

6. The main brunt of arguments advanced across the bar by learned counsel for the petitioner is that in fact, the petitioner was invalidated out from Army service showing his disability as 20% for 5 years by the Release Medical Board at the time of discharge and as such he was entitled to disability pension and his discharge order was passed by way of punishment in order to deprive him of what was validly due to him. He also assailed the contentions of the learned counsel for the respondents that the service pension was denied to the petitioner as he had not completed 15 years of Army Service. In this connection, he referred to Security Training Certificate issued by the respondent no 2 dated 29.01.1998 a perusal of which clearly shows that the petitioner was discharged on completion of 15 years of service. A copy of the aforesaid certificate has been annexed as Annexure 3 to the T.A.

7. Learned counsel for the respondents has refuted the averments of para 4 of the writ petition averring at the same time that no such certificate was issued by the Army as claimed by the petitioner. It was reiterated all over again that the petitioner had not earned the minimum qualifying service of 15 years so as to be entitled to service pension.

8. However, from a perusal of the records, it clearly transpires that the petitioner has not completed the minimum qualifying army service of 15 years for service

pension. Thus, in our view, the relief claimed on this count does not succeed.

9. Now coming to the next prayer which is primarily for grant of disability pension, learned counsel for the respondents vehemently opposed the prayer submitting that the petitioner was discharged under Army Rule 13 (3) Item III (v) of the Army Rules as undesirable and inefficient soldier and not on medical grounds. Disability Pension for such personnel is not authorised vide existing MoD/Army HQ orders on the subject. Additionally he contended that the disability of the applicant is neither attributable to nor aggravated (NANA) by military service.

10. The Ld council for the applicant submitted that it is clear that before discharge, the petitioner was in low medical category and was examined by the Release Medical Board which assessed his disability as 20% for five years. In the facts and circumstances of the case, and for all practical purposes, the petitioner ought to be deemed to have been invalidated out from service.

11. Thus the core question that surfaces for consideration is whether the petitioner who was discharged under Army Rule 13 (3) Item III (v) of the Army Rules on grounds of Inefficient soldier is entitled to the claim of being invalidated out because he happened to be in low medical category at the time of discharge. The related issue which also needs

careful consideration is the issue of attributability of his disability.

12. We have also found a mention in the counter from respondents that based on the orginal Writ Petition No. 43713 of 2002 filed in the High Court of Judicature at Allahabad, by the applicant, the Record office had taken up the matter with PCDA (P) Allahabad for consideration of his Disability pension. However without going into the merits of the case PCDA(P) Allahabad had replied that "*the individual was discharged from service being undesirable under Army Rule 13(3) III (V) of 1954 hence his claim for disability pension is untenable"*.

13. The law on the pension entitlement of undesirable and inefficient soldiers being discharged on exceeding the number of acceptable Red ink entries is by and large well settled. Going by the spirit and gist of a series of judgements by High courts and Supreme court, we need to clarify here that personal who are discharged from Army on account of the Policy of undesirable and inefficient soldiers are neither criminals nor persons guilty of any serious breach of Army discipline. They have been discharged not dismissed from service. They are soldiers who have committed minor offences in terms of military discipline and have been punished by their Commanding Officers with minor punishments. The minor offences in majority of cases relates

to overstayal of sanctioned leave and in certain cases also relates to reporting late for Parade/assigned place of duty, improperly dressed, loss of identity card, found in intoxicated state etc. Such minor offences in any other Govt department will not lead to removal of an employee from his job. However these soldiers are weeded out because of lack of improvement in their military discipline despite minor punishments and tendency to repeat the minor offences repeatedly. Such weeding out, as per the existing policy, is considered necessary for maintaining higher standards of military discipline and efficiency. The existing policy on removal of undesirable and inefficient soldiers has stood the test of time and legal scrutiny and has in built checks and balances.

14. Be that as it may, the issue that needs to be addressed is that having already been punished once for each Minor offence and thereafter collectively for all minor offences put together, through a forced pre mature Discharge from service, these soldiers, though not very efficient, don't deserve to be penalised at every future stage, for their rights and entitlements. In other words these soldiers will remain entitled for every other benefit which is due to any other soldier with the same rank and years of service.

15. We would now like to come back to the two core issues of this case. These two issues are related firstly with

attributability aspect of the disability and secondly with the question as to whether this administrative removal is a discharge or an invalidation out.

16. The law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316.** In this case 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]*

> *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)."*

17. 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**.

18. In the instant case, as per counter by respondents the disability was admittedly assessed as 20% for five years which was opined to be neither attributable to nor aggravated by military service by the RMB. In addition we find that no reasons have been given by the medical board as to why the disease is considered constitutional in nature and could not be detected at the time of initial selection for enrolment. Therefore in terms of the law emerging out of the above mentioned decisions of the Apex Court, the disability of the Applicant is considered as **ATTRIBUTABLE** to military service.

19. As far as the issue of considering the discharge as Invalidation is concerned, we may refer to a decision of Armed Forces Tribunal Regional Bench Chandigarh in **Balwinder Singh v Union of India and Ors (O.A.No 2119 of 2011).** In this decision the discharge of a soldier in low medical category but on grounds of undesirable and inefficient soldier has been considered as Invalidation primarily on the basis of Rule 4 of Entitlement Rules for Casuality Pension Awards 1982. This rule reads as follows "*Invalidating from service is a necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated 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".

20. Similarly the decision of High Court Of Punjab & Haryana in JAGGAR Singh vs Union of India &Ors on 11 may 2009 (Civil writ petition no-15227 of 2007) disability pension has been granted to a undesirable and inefficient soldier on similar grounds. This judgement also qouats a Division Bench judgment of the Delhi High Court in Mahavir Singh Narwal v. Union of India and another, CW No.2967 of 1989 decided on 5.5.2004, which has been affirmed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.24171 of 2004.

21. Commenting on the denial of disability pension for undesirable and inefficient soldiers vide Integrated HQ of Ministry of Defence (Army) letter dated 20.7.2006, the above mentioned judgement states "*The gist and spirit of the law laid down by this Court and the Delhi High Court is that the purpose of giving disability pension is disability suffered by a person which is attributable to military service or aggravated by military service. An individual, under the Rules extracted above, is entitled to disability pension on acquiring disability in the process of his serving the Army. Any differentiation, such as the one suggested by the respondents, would clearly be unreasonable, injudicious, illogical and arbitrary*".

22. Since the medical board has assessed the disability as 20% for five years, as such keeping in view the judgment of **Veer Pal Singh vs Ministry of Defence, reported in (2013) 8 SCC 83**, we feel that the case of the petitioner should be recommended for Resurvey Medical Board to reassess further entitlement of disability pension.

23. Thus in the facts and circumstances of the case, the T.A is allowed to the extent of treating the discharge as invalidation and eligibility to disability pension. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the petitioner @ 20% for five years which would stand rounded off to 50% for five years from the date of discharge. The respondents are further directed to refer the case of the petitioner to Resurvey Medical Board for further entitlement of disability pension, if any. The respondents are also directed to give effect to this order within a period of six months from the date of receipt of a certified copy of this order. In case, the respondents fail to give effect to this order within the stipulated time, they will have to pay

interest @9% on the amount accrued from due date till the date of actual payment.

24. There shall be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: November, 2017
MH/-