

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 35 of 2016

Thursday, this the 09th day of November, 2017

Hon'ble Mr. Justice D.P.Singh, Member (J)

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

1. Smt Parvati Devi wife of Late Shri Parshu Ram Singh.
2. Smt Indu Devi daughter of Shri Parshu Ram Singh.
3. Jai Prakash Kushwaha son of Shri Parshu Ram Singh.
4. Anil Kushwaha son of Shri Parshu Ram Singh.
5. Janardan Kushwaha son of Shri Parshu Ram Singh.
6. Manoj Kumar Kushwaha son of Shri Parshu Ram Singh.

All applicants of resident of village-Shankarpur, Post-Saidpur, District-Ghazipur (UP).

By Legal Practitioner : Shri R. Chandra, Learned Counsel for the applicants.

Versus

1. Union of India through The Chief of Army Staff, Army Head Quarters, New Delhi.
2. The Chief Controller of Defence Accounts (Pension), Allahabad.
3. The Record Officer, Bombay Engineer Group, Kirkee, Pune.

..... Respondents

By Legal Practitioner : Shri Kaushik Chatterji, Learned Counsel for the Respondents.

ORDER (Oral)

1. We have heard learned counsel for the applicants Shri R. Chandra and Shri Kaushik Chatterji, learned counsel for the

respondents, assisted by Maj Piyush Thakran, OIC Legal Cell and perused the records.

2. The deceased soldier was enrolled in the Army in Bombay Engineering Group on 12.12.1962 in SHAPE-I. While serving in the Army in Silliguri (Assam), he suffered from tearing of leg (Muscular Dystrophy) and was hospitalized in Military Hospital, Silliguri. After prolonged illness he was examined by a Medical Board who recommended him to be invalidated from service. Thereafter he was discharged from service on 23.09.1967.

3. Learned counsel for the applicants has drawn our attention to the fact that at the time of enrolment in the Army, the disease in question was not noticed by the screening medical board. It is also submitted that while serving in the Army, the applicant was declared medically fit during Annual Medical Board and was placed in medical category S1H1A1P1E1. Keeping in view the fact that the applicant served the Army for about five years (fought war of 1965) and was declared medically fit at the time of recruitment, it would be hard to believe that he was suffering from said disease from pre-enrolment stage. The submission of learned counsel for the applicants is that in case the applicant had been suffering from the aforesaid disease, it would have not been possible for him to serve the Army.

4. The Hon'ble Supreme Court in the case of *Dharamvir Singh vs. Union of India & Ors* reported in (2013) 7 SCC 316, while

considering the question with regard to payment of disability pension has held that in case the incumbent is found medically fit at the time of enrolment and keeps on serving the Army, the later disease from which he/she is found to have been suffering, shall be attributable to military service. The relevant portions of the aforesaid judgment are reproduced as under:-

“18. A disability “attributable to or aggravated by military service” is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:

“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.”

From Rule 5 we find that a general presumption is to be drawn that 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. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.”

*“28. The learned counsel for the respondent Union of India relied on decisions of this Court in **Om Prakash Singh v. Union of India** (2010)12 SCC 667, **Ministry of Defence v. A.V. Damodara** (2009) 9 SCC 140, **Union of***

India v. Ram Prakash (2010) 11 SCC 220 and submitted that this Court has already considered the effect of Rules 5, 14(a), (b) and (c) and held that the same cannot be read in isolation. After perusal of the aforesaid decisions we find that Rules 14(a), 14(b) and 14(c) as noticed and quoted therein are similar to Rule 14 as published by the Government of India and not Rule 14 as quoted by the respondents in their counter-affidavit. Further, we find that the question as raised in the present case that in case no note of disease or disability was made at the time of individual's acceptance for military service, the Medical Board is required to give reasons in writing for coming to the finding that the disease could not have been detected on a medical examination prior to the acceptance for service was neither raised nor answered by this Court in those cases. Those were the cases which were decided on the facts of the individual case based on the opinion of the Medical Board."

In the case of **Dharamvir Singh** (supra), their Lordships of the Supreme Court, however, held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. In the present case, no material has been brought on record by the respondents to indicate that the applicant was suffering from the said disease from pre-enrolment stage. In the said case of **Dharamvir Singh** (supra), the Hon'ble Supreme Court has held that the following are some of the diseases which ordinarily escape detection on enrolment:-

“(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation.

(b) *Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.*

(c) *Certain diseases of the heart and blood vessel e.g. Coronary Atherosclerosis, Rheumatic Fever.*

(d) *Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, mental Disorders, HIV Infections.*

(e) *Relapsing forms of mental disorders which have intervals of normality.*

(f) *Diseases which have periodic attacks e.g. Bronchial Asthama, Epilepsy, Csom, etc.”*

5. The respondents have failed to bring on record any material from which it may transpire that the applicant was suffering from any such disease from pre-enrolment stage. The hectic working conditions and hard labour put in by the members of the Armed Forces may cause such disease, which is attributable to military service.

6. In view of our findings as mentioned above, his disability is held to be 20% for five years. The Hon'ble Supreme Court in the case of ***Sukhvinder Singh vs. Union of India & Ors***, reported in 2014 STPL (Web) 468 SC has held that in case disability is less than 20%, then it shall be rounded off to 50%. Accordingly, the applicant's disability is rounded off to 50%.

7. At this stage, it has been submitted by learned counsel for the respondents that no prayer for rounding off has been made by the applicant. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of ***Sukhvinder Singh*** (supra), we are of the opinion that the applicant is entitled to rounding off of disability pension from 20 % to 50%. Accordingly, we mould the relief of rounding off of disability pension to 50%. Relevant portion of the judgment of Hon'ble Supreme Court in the case of ***Sukhvinder Singh*** is reproduced 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. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, 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. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

10. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above terms. The pension along with the arrears be disbursed to the Appellant within three months from today.”

8. In view of above, the T.A. is **allowed**. The applicants shall be entitled for disability pension at the rate of 50% from three preceding years of filing the writ petition with all consequential benefits and arrears, which shall be paid to him within four months from today. In case the respondents fail to grant disability pension @ 50% within the aforesaid period, an interest @ 10% on the amount accrued shall be paid to the applicants.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: Nov 2017
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