

RESERVED
COURT NO 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 14 of 2017

Thursday, this the 19th day of July, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Rect Jagbir Singh S/O Sri Bahori Singh, R/O Vill Pepali Kalan,
PO Nagala Jagdev, Distt-Aligarh (UP).

...Applicant

Ld. Counsel for the: **Shri K.K. Mishra, Advocate.**
Applicant

Versus

1. Union of India, Through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Commandant-Cum-Officer-in-Charge Records, Brigade of Guards Kamptee (MP).
4. CDA (Pension), Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh, Advocate**
Respondents Govt Counsel.

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

1. The present Original Application has been filed by the applicant under Section 14 of The Armed Forces Tribunal Act, 2007 for grant of following reliefs:-

(a) To quash CDA (P) Allahabad letter No G3/96/872/II dt 14.06.1996, as contained in Annexure A-2 to the O.A.

(b) To direct the respondents to grant disability pension to the applicant as per his entitlement w.e.f. 31 May 1995 i.e. the date he was discharged from service.

2. We have heard Shri K.K. Mishra, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents assisted by OIC Legal Cell and perused the records.

3. Delay in filing the O.A. was condoned vide order dated 06.01.2017.

4. Brief facts of the case are that the applicant was enrolled in the Army (Brigade of the Guards Regiment) on 30.10.1993 and was invalided out from service on 07.07.1995 in low medical category “EEE” under Rule 13 (3) (IV) of the Army Rules, 1954. The duly constituted Invaliding Medical Board held at INHS Asvini on 27.05.1995 assessed his disability @ 15%-19% (i.e. less than 20%) for the disease “NEUROSIS CONVERSION DISORDER”. The Invaliding Medical Board (IMB) assessed his disability as neither attributable to nor aggravated (NANA) by military service (NANA).

The applicant at the time of discharge had rendered one year and 234 days of service in the Army.

5. Ld. Counsel for the applicant submitted that during Jungle Training Camp the applicant was hit by a rifle butt resulting in injury to his left eye. The applicant was thereafter admitted in Military Hospital, Kamptee where he was provided treatment for about one month. Subsequent to that he was sent on one month's sick leave. On return from leave, the applicant was again admitted in the said hospital up to 25.02.1995 and on 26.02.1995 he was transferred to INHS Asvini for further treatment and psychiatric evaluation. In INHS Asvini Hospital he was examined by Eye Specialist as well as other Specialists. In the final analysis he was recommended to be invalided out with following observations:-

Disease: Neurosis conversion disorder.

Disability percentage: 15 to 19%.

Medical category: EEE

Attributability: Not connected being a psychiatric disorder.

He was finally invalided out of service w.e.f. 07.07.1995. His claim for grant of disability pension was rejected by PCDA (P), Allahabad vide letter dated 04.06.1996 on the ground that the disease was neither attributable to nor aggravated by military service (NANA). The Ld. Counsel for the applicant re-emphasized that in these circumstances the disability of the applicant should be considered as attributable to military service.

6. On the other hand, Ld. Counsel for the respondents averred that the applicant is not entitled disability pension as per para 173 of

Pension Regulations for the Army, 1961 (Part-I) which specifies that 'Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to and aggravated by military service in non battle casualty and is assessed at 20% or over.' In the instant case the applicant was discharged from service under Rule 13 (3) (V) of Army Rules, 1954 in medical category EEE. The duly constituted Invaliding Medical Board assessed his disability for the disease "NEUROSIS CONVERSION DISORDER" as neither attributable to nor aggravated by military service and assessed his disability @ 15-19% (i.e. less than 20%). Thus he is not entitled for disability pension.

7. We have given our anxious considerations on pleadings of both the parties and the material on record. We find it difficult to comprehend that if the disability percentage was only 15-19%, then where was the need to invalidate the applicant out of service? Secondly we also find it difficult to accept that his disability is not attributable to or aggravated by military service and is constitutional in nature due to following reasons:-

(a) The remarks of 'Not connected being a psychiatric disorder' in the Invaliding Medical Board is a very cryptic remark and does not explain as to how a fresh recruit developed the disability of 'NEUROSIS CONVERSION DISORDER.'

(b) The page 10 of Invaliding Medical Board clearly mentions that “Recruit was admitted in Military Hospital, Kamptee on 30 Nov 94 for blunt injury left eye, treated conservatively, sent on four weeks’ sick leave and on return discharged to unit.”

(c) It is significant that the applicant has claimed in his O.A. that during Jungle Training Camp he was hit by the rifle butt on his left eye and as a result, his left eye was injured and he had to be admitted in Military Hospital, Kamptee. It is also significant that vide letter dated 30.10.1996 (**Annexure III-A**) the applicant had written to his Record Officer stating same facts as above about the injury by rifle butt in his left eye during Jungle Training Camp and has requested for grant of disability pension.

(d) We also find it intriguing that the applicant was initially admitted, treated and sent on sick leave by Military Hospital, Kamptee for injury in his left eye. After sick leave he was again admitted to Military Hospital, Kamptee on 30.01.1995 for eye problem. However, Military Hospital, Kamptee referred the applicant to INHS Asvini for psychiatric evaluation where he was finally declared as a case of ‘NEUROSIS CONVERSION DISORDER’.

(e) We find that the applicant was doing well in his training from enrolment date i.e. 30.10.1993 till he received the injury in his left eye somewhere in the middle of 1994. All his medical problems have started only after this injury. Therefore, it cannot be said that there is no casual connection between the injury of the applicant and his subsequent medical problems related to the eye and the NEUROSIS CONVERSION DISORDER.

8. On the question of attributability of disability to military service, we would like to refer to the judgment and order of Hon'ble the Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors*** reported in (2013) 7 SCC 316. The relevant portion of the aforesaid judgment, for convenience sake, is 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.”*

9. It is made very clear in the aforesaid judgment of Hon’ble Apex Court (supra) that once a person has been enrolled in fit medical condition and is discharged in low medical category, simply recording a conclusion that the disability is not

attributable to military service, without giving sufficient reasons as to why the disease or disability is not deemed to be attributable to service, is not acceptable and in such a case benefit of doubt will be given to the applicant. In this case the fact that the disability of the applicant has emerged only after his injury at Jungle Training Camp cannot be over looked. We therefore declare the disability of the applicant as attributable to military service.

10. We would also like to bring on record that the issue of minimum disability percentage for invalidation is no more RES INTEGRA. The matter has been settled by Hon'ble Supreme Court in its judgment in case of **Sukhwinder Singh vs Union of India & Ors** reported in (2014) STPL (WEB) 468 SC. The relevant extracts are as follows:-

“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.”

In view of the above, the disability percentage of applicant will be deemed to be 20% from date of discharge i.e. 07.07.1995.

11. On the issue of benefit of rounding off of disability percentage, we feel that the matter with respect to rounding off should also be clarified so as to do complete justice to this case. In consonance with the policy letter dated 31.01.2001 and in terms of the decision of Hon'ble Apex Court in the case of ***Union of India & Ors vs. Ram Avtar & Ors***, Civil Appeal No 418 of 2012 dated 19.12.2014 and ***Sukhwinder Singh vs Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC, we are of the view that since the provision of rounding off was introduced only w.e.f. 01.01.1996 the applicant is entitled to the benefit of rounding off of his disability element from 20% to 50% w.e.f. 01.01.1996.

12. In view of the above, we allow the present O.A. and set aside the impugned orders and direct the respondents to grant disability pension to the applicant @ 20% from 07.07.1995 till 31.12.1995 which shall stand rounded off to 50% from 01.01.1996 till 06.07.1997 i.e. until two years after his discharge as per recommendations of Invaliding Medical Board (IMB).

The respondents are also directed to conduct a Re-survey Medical Board (RSMB) within four months from the date of this order. Further eligibility to disability pension shall be subject to outcome of RSMB. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 9% per annum from the due date, till actual payment thereof.

13. O.A. is **allowed** accordingly.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: July, 2018

gsr

(Justice SVS Rathore)
Member (J)