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COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

A.

OA 944/2018

Ex Sep Sukhvir Singh	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Mr. Romil Pathak and Mr. Amit Kumar Sachan, Advocates
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
22.07.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/RB/

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ORDER

The applicant was enrolled in the Army on 18.12.1971. He was invalided out from service w.e.f. 25.03.1982 before fulfilling the condition of enrollment on account of Low Medical Category, EEE(P) for disease "Affective Psychosis" (unspecified) 296-C, assessed @ 40% for a period of 2 years on the recommendations of the Invaliding Medical Board (IMB). IMB in its proceedings dt. 19.02.1982 opined that the disability was not attributable or aggravated by military service. In view of the opinion of IMB applicant was invlaided out from service wef 26.03.1982.

2. Applicant's initial claim for Disability Pension was rejected by PCDA vide letter dt. 21.02.1983 stating that disability is neither attributable to nor aggravated by military service and does not fulfill

the twin conditions, namely "that it existed before or arose during military service and has been or remains aggravated thereby". He was however granted disability pension consisting of the service element only from 26.03.1982 vide PPO no. D/SE/51/1983 dt. 02.02.1983.

3. The applicant submitted an appeal dt. 21.07.1983 against rejection of his claim for disability element of pension claim, the same was processed to the Appellate Committee on First Appeal (ACFA) through PCDA(P) Allahabad. It was communicated to the applicant that his appeal has been dismissed by Government of India, Ministry of Defence vide letter dt. 23.08.1985.

4. At this stage, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following relief:

- (a) Direct the respondents to grant the disability pension of L/Hav from @40% to 50% w.e.f. from his date of discharge from service i.e. 21.03.1982 alongwith interest @18% on the arrears. the*
- (b) Direct the respondents to grant the applicant the Rank of the Ln/Hav which was illegally taken away from him and was discharged in the Rank of LMC.*
- (c) Direct the respondents to grant the applicant proportionate service pension for the period of service rendered by him in Army.*

(d) *Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

(e) *Award Cost;*

5. The applicant, through this OA has also sought for the grant of Rank of Ln/Hav, however, during the course of hearing on 01.05.2025, the counsel has restricted his prayer to the grant of disability element of pension only. Thus the present case is considered qua the prayer for grant of disability element of pension only.

6. The contention of learned counsel for the applicant is that the applicant was enrolled in the Indian Army on 18.12.1971 after thorough medical examination and there was no note of any disability recorded in the service record at the time of acceptance in military service. He was invalided out from service on 25.03.1982 in Low Medical Category 'EEE' (P) due to disability "Affective Psychosis" (unspecified) (296-C), which he has contracted during the service. It is stated that ignoring the binding precedents of Hon'ble Supreme Court, his claim for disability pension was rejected.

7. The learned counsel for the applicant had placed reliance on the judgement of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCW 4236], Sukhvinder Singh v. Union of India (2014SCR (6)32 (SC) decided

on 25.06.2014 to canvass that the disease or disability which led to an individual's discharge from service will ordinarily be deemed to have arisen in service if no note of it was made at the time of entry into military service.

8. *Per contra*, the learned counsel for the respondents submitted that the disability of the applicant was not connected with military service and was assessed as neither attributable to nor aggravated by the service, hence, the applicant is not entitled for disability pension in view of Para 173 of Pension Regulation of Army (Part-1), 1961.

9. It is further submitted that applicant's disease preexisted before joining Army as evident from Report of Classified Specialist (Psychiatry) dt. 18.02.1982 and the Report of IMB. Further, the findings of the IMB was never challenged or disputed by the applicant.

10. Having heard the submissions made by the learned counsel for the parties and on perusal of the IMB proceedings, we are of the view that this OA deserves to be allowed.

11. It is not in dispute that applicant was invalided out of service on 25.03.1982, after 10 yrs. 98 days of service on account of suffering from disability "Affective Psychosis" category EEE (P) assessed at 40% for 2 years, which is more than bare minimum for the grant of disability element of pension. It is also not in dispute

that applicant was granted service element of the Disability Pension for life. At this stage we deem it appropriate to advert to certain features of the report of IMB:

- (a) *The IMB certified that applicant was suffering from Affective Psychosis (unspecified), (296-C) since September, 1981.*
 - (b) *From 08.08.1972 to 08.10.1973 the applicant served in Op Savage (Assam, West Bengal) and from 09.05.1976 to 01.07.1979 in J&K.*
- (i) The personal statement (Part-1) of applicant stated that:
- (a) *His ailment had first started on 07.09.1981 i.e. after 10 years of his enrollment in service when he was posted MH Bikaner.*
 - (b) *He did not suffer from any disability before joining Armed Forces.*
- (ii) The statement of case contained in Part-II of the IMB Report shows that disability "Affective Psychosis" (unspecified), (296-C) originated in September, 1981 at Bikaner.
- (a) *In the opinion of the Medical Board contained in Part III of IMB Report, which is marked as Confidential (Not to be communicated to the individual), the answer of the Medical Board to the question as to*

whether the disability existed before entering service, was "Yes", further stating that applicant was treated in Civil Mental Hospital, New Delhi before joining Army. However, there is no record to show from where this observation of IMB originated.

- (b) Further, in answer to the question "What exactly is the cause thereof, the IMB has opined that "disability persisted before joining service was progressing while in service".*
- (c) The degree of disablement as compared with healthy person of the same age and sex was found to be 40% for 2 years.*
- (d) The Medical Board opined that individual requested further treatment and recommended that he is fit to be invalided in medical category EEE (Psychological).*

(iii)

- (a) Part IV marked as confidential shows that applicant has served for 10 years 98 days to the date of discharge.*
- (b) Applicant's case was recommended for invalid/disability pension (As admissible vide AI 415/75)*
- (c) In January 1982, the CO 21 Rajput unit certified that and recommended that full pension admissible under the rules may be sanctioned.*

12. Though, as per the opinion of IMB, the disability was preexisting, however, there is no document on record to show that applicant was ever treated in Civil Hospital as opinionated therein, specifically in view of the personal statement of the applicant that “he did not suffer from any disability before joining the service” and also in absence of any note to that effect in his service record at the time of acceptance. Even if respondent’s case is accepted that the disability was pre-existing, it is evident from Part-III of the IMB proceeding Reprot that it got aggravated while in service. Psychosis is a disease, which is affected by stress and strain and as reflected from the service profile of the applicant he served at field Op Assam and also at J&K before being posted at Bikaner. Moreover, the opinion of the IMB as evident from Part III of the IMB Report was “Confidential” and “Not to be communicated to individual”. Under such fact and circumstances, when the finding/opinion of the IMB was not communicated to the applicant, he had no occasion to challenge the same.

13. Regulation 173 of Pension Regulation for the Army, 1961 deals with the primary condition for the grant of Disability Pension. Regulation 173 reads as under:-

“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 a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over."

A perusal of the aforestated makes it clear that Disability Pension is to be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by Military Service and which is assessed 20% or more.

14. Whether the disability is attributable or aggravated by Military Service is determined by the Entitlement Rules for Casualty Pensionary Awards 1982 (hereinafter referred to as 'the Rules'). Rule 4 of the Rules makes it clear that invaliding from service is a necessary condition for grant of disability pension. An individual who at the time of his release is in a Low Medical Category than that in which he was recruited will be treated as invalidated from service.

15. Rule 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982 reads as under:

"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."

It is thus clear from Rule 5 that entitlement to casualty pensionary award and evaluation of disability shall be based on the presumption that the individual was in sound physical and mental condition while entering the service in absence of any physical/mental disability noted or recorded at the time of entrance. It is also to be presumed that in event of is being discharged from service on medical ground any deterioration in his health which has taken place will be taken as due to service.

16. Rule 9 of the Rules provides that onus of proof is on the authority and the claimant shall not be called upon to prove the conditions of entitlement. In case of doubt the benefit will be given liberally to the claimant.

17. Further Rule 14(b) provides that a disease which led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service. However, if the medical opinion says the disease could not have been detected on medical examination before entering military service, then such a disease

would not be deemed to have arisen during service provided reasons are recorded.

18. Provision of Regulation 173 has been examined in the case of Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCW 4236] wherein the Hon'ble Supreme Court of India has held, that after thorough medical examination the applicant was enrolled into military service and there was no note of any disability recorded in his service records. Therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

19. In Union of India Vs. Rajbir Singh, the Hon'ble Supreme Court after considering the Rules 5, 9 and 14 has culled out the following principles:

(i) 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;

(ii) in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;

(iii) the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service; and

(iv) if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated.

20. After noticing, lack of medical parameters in the relevant rules and regulations considered by the invaliding medical boards justifying the removal of services and officer from service, the Hon'ble Supreme Court, in case of *Sukhvinder Singh* (supra), posed the question, 'can the authorities be permitted to portray that whilst a person has so minor a disability as to disentitle him for compensation, yet suffers from a disability i.e. major or serious enough to snatch away his employment'.

21. It was in that context, Hon'ble Supreme Court held that 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. Para 11 reads thus:

11. 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 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 appear to be no provisions authorising 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.

22. As regards the fact that the IMB had assessed the duration of disablement of the applicant for two years only, it is important to refer to the judgment of Hon'ble Supreme Court in the case of Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, wherein the Hon'ble Apex Court while interfering with the decision of the Armed Forces Tribunal granting disability pension for two years to the applicant, granted the disability for life and observed as under:-

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for

his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

[Emphasis supplied]

23. Thus a person afflicted with diseases which are permanent in nature is entitled to disability pension for life which cannot be restricted for a period of time and the assessment/percentage of disability as made by the Medical Board has to be treated for life. It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period, but adjudicated it to be considered for life, if the disability was of permanent nature.

24. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for disability element of pension in respect of disability i.e "Affective Psychosis" (unspecified) 296-C, @ 40% for life.

25. Accordingly, the application is allowed holding that the applicant is entitled to disability element of pension @ 40% rounded off to 50% for life with effect from the date of his discharge in terms of judgment of the Hon'ble Apex Court in Union of India Vs Ram Avtar (Civil Appeal No. 418/2012), decided on 10.12.2014.

26. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order. The amount of arrears however is directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in Union of India & Ors. Vs Tarsem Singh reported in 2008 8 SCC 648 which shall be paid by the respondents, failing which the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

27. There is no order as to costs.

Pronounced in open Court on this 22nd day of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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