ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

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OA 3073 of 2013

Jaspal Singh …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

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For the Petitioner (s) : Mr Rajeev Anand, Advocate
For the Respondent(s) : Mr Vishal Taneja CGC

CORAM:
HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)
HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)

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ORDER
09.08.2017

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This is a case for grant of disability pension w.e.f. 01.10.2008 to the applicant. The applicant initially was enrolled in the BEG on 18.7.1974 in Boys Coy as student. He was taken on strength of BEG as Rect w.e.f. 30.8.1976 and discharged on 31.10.1993 under Army Rule 13(3) item III (iv) after rendering 17 years 02 months and 02 days qualifying service for which he is getting service pension. Thereafter he got himself re-enrolled in the DSC and was discharged from DSC service on 30.9.2008 on completion of his contractual terms of engagement under the provisions of Army Rule 13(3) item III(i). He was not granted extension beyond his initial contractual terms of engagement, as he was placed in permanent low medical category by the Release Medical Board which assessed his disabilities (i) "DELUSIONAL DISORDER" and (ii) "DIABETES MELLITUS TYPE II" as neither attributable to nor aggravated by military service and not connected with service. The reason is stated to be constitutional disorder for the disability mentioned at (ii) above. The degree of disablement for ID(i) was assessed at 15-

19% for life and for ID (ii) 30% for life. Both the disabilities were composite assessed at 40% for life. Onset of the disease is 28.5.2003 at Pulgaon.

2. The claim for grant of disability pension was rejected vide letter dated 12.11.2008 (Annexure A-2) on the ground that disabilities are neither attributable to nor aggravated by military service and as per Regulation 179 of Pension Regulations for the Army 1961, Part-1, with an advice to prefer an appeal to the Appellate Committee within six months if he is not satisfied with the above decision. However he did not prefer any appeal.

3. The respondents have opposed the petition and have pointed out that after completion of the Army tenure, the applicant was transferred to Pension Establishment and he was drawing regular pension of the Indian Army. Thereafter, he was re-enrolled in Defence Security Corps (DSC) and after putting 10 years of service, he was discharged under the provisions of Army Rule 13(3) item III(i). He was not granted extension beyond his initial contractual terms of engagement due to his placement in low medical category. Before discharge, he was brought before a duly constituted Release Medical Board (RMB) which assessed his disabilities aforesaid as neither attributable to nor aggravated by military service with 'NIL' percentage qualifying for disability pension. In support thereof, they have referred the order of Hon'ble Principal Bench rendered in **OA 690 of 2010 titled Ex. Sep. Vidhya Sagar Vs UOI & Ors.** passed on 27.4.2011 which is distinguishable. They further averred that as per Para 179 of Pension Regulations for the Army 1961 (Part-1) "an

individual retired/discharged on completion of tenure or on completion of service limits, if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 percent". Para 81 of Pension Regulations for the Army 2008 (Part-1) stipulates that 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 percent or over." This is not the case here, therefore, he is not entitled to disability pension.

4. The applicant also filed replication and stated that if no note in respect of the disease is given at the time of enrolment of the individual in the DSC then the disease is ordinarily deemed to have arisen during his DSC service. In this regard, he has taken support of various judgments including Hon'ble Supreme Court judgment titled **Dharamvir Singh Vs Union of India & Ors. in Civil Appeal No. 4949 of 2013 arising out of SLP(C) No. 6940 of 2010, decided on 02.07.2013.**

5. We have bestowed our best consideration to the rival submissions of both the parties and perused the record.

6. It is pertinent to note that in the RMB there is a note that the applicant was not suffering from any disability before joining the Armed

Forces. This matter is no more *res integra* and there have been a catena of judgments. In CWP No. 7277 of 2013 titled as **Umed Singh Vs UOI and others** decided on 14.05.2014, the Punjab and Haryana High Court allowed a similar case. Relevant portion of the judgment is reproduced as under:-

> "In terms of Regulations contained in Appendix II, the Armed Forces personnel are not to prove the conditions of entitlement of pension. They are entitled to receive the benefit of doubt [Clause 9]. **In terms of Clause 14, once it is established that conditions of military service did not determine or contribute to the onset of the disease, but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation. But if the medical opinion finds that the disease could not have been detected on medical examination prior to acceptance of service, disease will not be deemed to have been arisen during service [(Rule14(b)]. Thus, if the Medical Board has not opined that disease could not have been detected on medical examination prior to acceptance of service, opinion of the Medical Board that the disease is not attributable or aggravated by military service would be contrary to the statutory regulations and, thus, the report of the Medical Board would be susceptible and liable to be set aside**. In that eventuality, it will not be a case of setting aside the report of the Medical Board only for the reason that in exercising of power of judicial review, another view is being taken but such report will be set aside for the reason that it does not satisfy the parameters specified in the Regulations and the instructions. Thus, in cases where the Medical Board does not disclose the reasons that disease could not have been detected on medical examination prior to acceptance of service, the cause of discharge from armed forces, will be deemed to be aggravated or attributable to military service."

7. Further, the above judgment quoted from a Hon'ble Supreme Court case, **Dharamvir Singh Vs UOI and others (Supra)**, as under:-

> "28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated 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 or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix II (Regulation 173).

(ii) 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 r/w Rule 14(b)].

(iii) 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).

(iv) 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)].

(v) 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. [14(b)].

(vi) 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. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above.

8. In the concluding paragraphs of Dharamvir Singh's (supra) judgment, the Supreme Court held as under:-

"*32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."*

33. As per Rule 423 (a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is

> *immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases' have been prescribed at Chapter IV of Annexure I ; under paragraph 4 Post traumatic epilepsy and other mental change resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service condition."*

9. Therefore the case of the applicant tested on the above settled land mark judgment of the Supreme Court, the respondents should not have rejected the case of the applicant for the disability pension asked for, as in **Dharamvir Singh's case (**supra) it was clearly held that if there is no note recorded at the time of entry into service, in the event of his subsequent discharge on medical grounds, any deterioration in his health is to be presumed to be due to service.

10. As such, for the aforesaid reasons, we set aside that part of the RMB wherein the applicant's disease has been opined to be neither attributable to nor aggravated by service. Consequently we hold that the applicant is eligible for disability pension consisting of service element and disability element for the service rendered in DSC w.e.f. 01.10.2008 for life @ 40% rounded off to 50% as per the judgment of the Apex Court rendered in **Union of India and others Vs Ram Avtar in Civil Appeal No. 418 of 2012 decided on 10.12.2014.** Accordingly the petition is allowed.

11. The respondents are directed to calculate the arrears and make the payment to the applicant within four months from the date of receipt of a

certified copy of this order failing which, the amount shall carry interest of 8% per annum from the date of this order.

12. Oral prayer made by the learned counsel for the respondents for grant of leave to appeal before the Hon'ble Supreme Court is declined.

13. No order as to costs.

(Sanjiv Chachra)
Member (A)

(Bansi Lal Bhat)
Member (J)

09.08.2017
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