ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR

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MA 3455 of 2016 and OA 750 of 2015

Ashok Kumar …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

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For the Petitioner (s) : Mr Mohan S Thakur, Advocate
For the Respondent(s) : Mr FS Virk CGC

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

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ORDER
31.08.2017

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MA 3455 of 2016

Rejoinder already filed is taken on record. MA 3455 of 2016 standsl disposed of.

OA 750 of 2015

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant was enrolled in the Army on 11.10.1984. As per IHQ, MoD(Army) letter dated 20.09.2010, the applicant was granted extension in service for two years in the rank of Subedar w.e.f. 10.10.2012 to 09.10.2014 as he had already completed 28 years of service on 09.10.2012. However during extension period, he was downgraded to medical category S1H1A1P2(Permanent)E1 on 10.06.2013 and was discharged from service on 30.11.2013 during his extension period of service.

While serving with 156 Air Defence Regiment, the applicant was admitted in Base Hospital, Delhi Cantt and was diagnosed as a

patient of **"Primary Hypertension".** He was downgraded in low medical category S1H1A1P3 (T-24) by the Medical Board. At the time of discharge, the applicant was in Medical Category P2 (Permanent) for his disability "**Primary Hypertension"** and the Release Medical Board (RMB) held on 22.07.2013 (Annexure A-3) assessed his disability at 30% for life which was considered as neither attributable to nor aggravated by military service due to onset in peace station and there is no close time association with Fd/HAA/CI Ops tenure. Composite assessment of the disability was 30% for life and net assessment qualifying for disability pension was 'Nil for life'. The disability pension claim was rejected on this basis and he was intimated vide letter dated 11.01.2014 (Annexure A-1). He was advised to file an appeal against the rejection of disability pension within six months if he is not satisfied with the above decision. The applicant submitted first appeal which was rejected by the Appellate Committee of First Appeal (ACFA) on the ground that "the ID is an idiopathic disorder affecting the blood pressure of the systematic circulation. The ID has a strong genetic preponderance and is per se not attributable to service. Aggravation is conceded when the onset occurs while serving in Fd/CI Ops /HAA areas. Onset of the ID was in peace station and individual continued to serve in the same peace station till his discharge from service." He was also advised to prefer second appeal in case he is not satisfied with the decision of the Committee. However he did not file second appeal and filed the present OA.

The Release Medical Board (RMB) held on 22.07.2013 (Annx A-3) assessed his disability **Primary Hypertension** at 30% for life and declared the same as neither attributable to nor aggravated by military service. This is in contradiction to their own opinion wherein the medical board opined that the disability was not existing before entering into service and the disability is such which can easily be detected by routine medical examination at the time of enrolment. The cause given by the medical board is "Onset in peace station" without giving any reason in support which is against the statutory provisions of Entitlement Rules and Casualty Pensionary Awards 1982.

The claim for grant of disability element was rejected by Army Air Defence Records vide their letter dated 11.01.2014 (Annx A-1). He has cited a judgment of the Hon'ble Punjab & Haryana High Court, **CWP 7277of 2013 titled Umed Singh Vs UOI & Others decided on 14.05.2014** and also based his case on Regulation 173. Reason such as "Onset in peace station" is not reason enough as per the existing rules. The RMB has also recorded that the ID was not existing at the time of entry into service. Under these circumstances the issue is no more *res-integra*. There has been a catena of judgments of the Apex Court examining the case laws and laying down the principles to be followed in such cases. We draw support from the judgment of the Apex Court in **Dharamvir Singh Vs Union of India (2013)7 SCC 316** which took note of the provisions of 'Pension Regulations, Entitlement Rules and the General Rules for Guidance to Medical Officers' and summarized the legal position as follows :-

"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.

He has also claimed rounding off from 30% to 50% on the basis of the judgment of the Apex Court in **Civil Appeal No. 418 of 2012 titled Union of India and Others Vs Ram Avtar decided on 10.12.2014.**

On issue of notice, the respondents filed their written statement. They have taken the plea that onset of the said disability was at peace station, hence the ID is assessed as not attributable to nor aggravated

by military service. Since he is not in receipt of disability pension, he is not entitled for the benefit of rounding off as per rules.

The applicant also filed rejoinder which is taken on record. He has reiterated his averments as mentioned in main OA.

Having heard the learned counsel for the parties and perusing the record, we find that when the applicant joined the Army, he was in SHAPE- 1. The origin of the aforesaid disease was during service. Otherwise also, in view of the above facts, judgment of the Hon'ble Supreme Court rendered in ***Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316*** is fully applicable and the relevant paragraphs '32 and 33' are reproduced here 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 petitioner 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 "Genrealised 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."***
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> ***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."***

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 and others*** Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and in decided on 11.2.2016.

Finally, in the latest judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos. 2633 of 017 Ex. Gnr. Laxmanram Poonia vs. Union of India and others [2017 SCC On Line SC 163]*** decided on 22.02.2017, the same view has been reiterated by the Apex Court. We may gainfully quote paras 26 & 27 from the judgment as under:

> ***"In the absence of any evidence on record to show that the appellant was suffering from any such disease like schizophrenia at the time of entering into the Military service, it will be presumed that the appellant was in a sound mental condition at the time of entering into the Military service and the deterioration of health has taken place due to Military service. ……..Applying the principles of Dharamvir Singh's case and Rajbir Singh's case, it has to be presumed that the disability of the appellant bore a causal connection with the service condition……"***

Hence, the case of the applicant tested on the above settled land mark judgments of the Supreme Court, the respondents should not have rejected the case of the applicant for the disability pension asked for as in ***Dharmavir's case*** aforesaid clearly holds that it is immaterial whether the disease originated in peace area or field area. His case is fully covered by the ratio decidendi of the above referred judgments of the Apex Court, therefore, the stand of the respondents that the

onset of ID was in a peace area, is in violation of Para 423(a) of Regulations for the Medical Services in Armed Forces which states, that, '***it is immaterial whether the cause giving rise to the disability or death occurred in a field/active service area or under normal peace conditions***.'

In view of the aforesaid facts and the law, in our opinion, the applicant is entitled to grant of disability pension on and w.e.f the date of his invalidment i.e. 01.12.2013 and the disability pension is rounded off by computing his disability to the extent of 50% as against 30% wef 01.12.2013 in view of the judgment of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** CA No. 418 of 2012 decided on 10.12.2014.

The respondents are directed to calculate the arrears and pay within the period of 3 months from the date of receipt of copy of this order by the learned counsel for the respondents, failing to do so will carry interest at the rate of 8% per annum from the date of order.

In the result, the impugned orders are set aside and the petition stands allowed.

(Munish Sibal)
Member (A)

(Bansi Lal Bhat)
Member (J)

31.08.2017
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