

**ARMED FORCES TRIBUNAL, REGIONAL BENCH CHANDIGARH
AT CHANDIMANDIR**

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OA 2692 of 2017

Wednesday, the 19th day of Dec, 2018

CORAM:

HON'BLE MR JUSTICE MOHAMMAD TAHIR, MEMBER (J)
HON'BLE LT GEN N.B. SINGH, MEMBER (A)

Jai Bhagwan

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Applicant

(By Mr Surinder Sheoran, Advocate)

Versus

Union of India and others

.....

Respondents

(By Mr Mukesh Kaushik Sr PC)

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ORDER

This OA has been filed under Sections 14/15 of the Armed Forces Tribunal Act, 2007, impugning letters/orders dated 11.12.1995 (Annexure A-2) and dated 05.11.1998(Annexure A-3) whereby the disability claim of the applicant has been rejected being declared as *neither attributable to nor aggravated by service and not connected with service*.

2. The applicant was enrolled in the Army on 30.12.1993 as Recruit and was invalided out from service on 18.07.1994. While undergoing basic military training, he was admitted in Air Force Hospital, Bangalore where he was found patient of '**SCHIZOPHRENIA 295**'. Ultimately, being a recruit, cannot be a fit soldier in Armed Forces and recommended to be invalided out of service in medical category. Accordingly, the applicant was brought before a duly constituted Invalided Medical Board at Air Force Hospital, Bangalore on 16.04.1994 where his disability "**SCHIZOPHRENIA**" has been assessed at **40% for two years** as *neither attributable to nor aggravated by military service as not connected with military service* being detected while serving in peace station. Hence, the applicant was invalided out from service w.e.f. 18.07.1994. Disability pension claim of the applicant was rejected on the ground that "the disability is neither attributable to nor aggravated by military service". Thereafter, the

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applicant preferred an appeal but was rejected vide order dated 05.11.1998 (Annexure A-3). Hence. this present original application.

3. The case of the applicant is, that, the Invaliding Medical Board wrongly declared his disability as neither attributable to nor aggravated by military service being not connected with military service and detected while serving in peace station and, therefore, is conceded not attributable to service which is not only in conflict with the rules but also in contravention to the decisions of the Hon'ble Supreme Court. He relies upon the Entitlement Rules 1982 which he contends have to be applied to determine attributability and aggravation. The said rules read along with Guide to Medical Officers and Regulations of Medical Services of the Armed Forces (RMSAF) clearly stipulate, that the benefit has to go to the claimant who shall not be asked to prove his /her entitlement and that reasons are to be recorded to rebut claim of attributability/aggravation. He has relied upon the decisions of the Hon'ble Supreme Court in **Civil appeal No. 4949/2013 Dharamvir Singh vs. Union of India** decided on 02.07.2013, **Civil Appeal No. 2337/2009 Union of India vs. Chander Pal** decided on 18.09.2013, **Civil Appeal No. 5605 of 2010 Sukhvinder Singh vs. UOI** decided on 25.06.2014, **Civil Appeal No. 2904/2011 UOI Vs. Rajbir Singh** decided on 13.02.2015, **Civil Appeal No. 11208/2011 UOI vs. Angad Singh Titaria** decided on 24.02.2015, **Civil Appeal Nos. 4357-4358/2015 (arising out of SLP (Civil) Nos. 13732-13733/2014) UOI Vs Manjeet Singh** decided on 12.05.2015 and OA 298 of 2011 Harpal Singh Vs Union of India and others decided on 04.01.2018 by this Tribunal.

4. The applicant prays for grant of disability pension in accordance with rules as held by the Hon'ble Supreme Court by quashing the rejection letters.

5. On issuance of notice, the respondents filed their written statement wherein it has been stated that the disability of the applicant is neither attributable to nor aggravated by military service and the said disease was detected while serving in peace station, hence not connected with service. The percentage of disablement was assessed at 40% for two years, but NIL percent for disability pension by the IMB. The case of the applicant is not

covered under the provisions of Regulation 173 of Pension Regulations for the Army 1961 (Part-1) and also is not covered under the provisions of Para 4 and 10 of Entitlement Rules for the Casualty Pensionary Awards 2008.

6. Having heard the learned counsel for the parties and perusing the record, we find that when the applicant joined the military service, 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."

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."

7. 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-

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33 of 2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015), **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016.

8. As far as admissibility of disability pension to recruits is concerned, the eligibility is fully covered by Regulation 181 of the Pension Regulations for the Army 1961 which is as hereunder :

“181. Recruits and young soldiers and Boys, shall be eligible for disability pension at the rates and under the conditions applicable to a sepoy of the lowest group.”

9. On the basis of the above case law of the Hon’ble Supreme Court and Regulations, we are of the opinion that the applicant is entitled to disability pension. The disability has been assessed by the IMB at **40% for two years.** *The applicant is held entitled to the disability pension for two years that is at the rate of 40% from 19.07.1994 to 31.12.1995 and to the extent of 50% as against 40% from 01.01.1996 to 18.07.1996 after being rounded off in view of the judgment of the Hon’ble Supreme Court in **Civil Appeal No.418 of 2012, titled Union of India & Ors. VS. Ram Avtar**, decided on **10th December, 2014.***

10. In the result, the OA is allowed and the impugned letters/orders are set aside. The respondents are directed to calculate the arrears as herein mentioned above in Para 9 and make the payment thereof within a period of three months from the date of receipt of certified copy of this order by the respondents failing which it shall carry an interest @ 8% per annum from the date of this order.

11. Since the disability of the applicant was assessed for two years only, therefore, Re-survey Medical Board (RSMB) of the applicant shall be held within three months from the date of this order and the applicant shall make himself available. In case, he is still found disabled in the RSMB to be held now, in that case the arrears, if any, shall be restricted to three years only from the date of filing of this O.A.

12. No order as to costs.

(N.B. Singh)
Member (A)
Sks

(Mohammad Tahir)
Member (J)