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

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Original Application No. 2275 of 2013

No. 1243893 Ex Sep Karnail Singh, aged 64 years, son of Gurmukh Singh, resident of Village Ahmeshpur, Post Office/Tehsil Naraingarh, District Ambala (Haryana).

--- Applicant

Versus

01. Union of India through Secretary to the Government of India, Ministry of Defence, South Block, New Delhi-110001.

02. Chief Of Army Staff, IHQ of Ministry of Defence (Army), Adjutant General's Branch, Additional Directorate General, Personnel Services, DHQ PO, New Delhi-110001.

03. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (U.P.).

04. Officer-in-Change, Records, Artillery Records, PIN 908802, Care of 56 A.P.O.

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Respondents

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**CORAM**: **Hon'ble Mr. Justice M.S. Chauhan, Judicial Member.**
**Hon'ble Lt. Gen. Sanjiv Chachra, Administrative Member.**

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Present: Applicant by Lt. Col. S.N. Sharma (Retd.), Advocate.

Respondents by Ms. Geeta Singhwal, Advocate, Senior Panel Counsel.

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**ORDER**:

**06.09.2017**

**Miscellaneous Application No. 2205 of 2016**:

01. By way of this Miscellaneous Application permission is sought to place on record reply to the Review Application No. 16 of 2015, on behalf of respondents No. 1 to 4. However, the Review Application has already been disposed of vide order dated 15 February 2016. The Miscellaneous Application, therefore, is rendered infructuous and is disposed of accordingly.

**Miscellaneous Application No. 571 of 2016**:

02. By way of this Miscellaneous Application permission is sought to place on record replication to the reply filed in Review Application No. 16 of 2015. However, the Review Application has already been disposed of vide order dated 15 February 2016. The Miscellaneous Application, therefore, is rendered infructuous and is disposed of accordingly.

**Miscellaneous Application No. 1231 of 2015 & Review Application No. 16 of 2015**:

03. By way of Miscellaneous Application No. 1231 of 2015 it is prayed that Review Application No. 16of 2015 be entertained. The Review Application has already been disposed of vide order dated 15 February 2016. Thus, no further orders are required to be passed.

**Miscellaneous Application No. 1760 of 2015 in RA 16 of 2015**:

04. By way of Miscellaneous Application No. 1760 of 2015 it is prayed that hearing of the case fixed on 14.7.2015 be adjourned to any other date after 15.7.2015. As on 14.7.2015, hearing was adjourned to 20.8.2015, therefore, no further orders are required to be passed.

**Original Application No. 2275 of 2013**:

05. This Original Application, brought by the applicant to seek disability pension was dismissed vide order dated 17 March 2015. The applicant, vide Review Application No. 728 of 2015, sought review of order dated 17 March 2015. After hearing the parties, this Tribunal,

vide order dated 15 February 2016, recalled the order dated 17 March 2015 and restored the Original Application to its original number. This is how this Original Application has come up for hearing before us.

06. The applicant was enrolled as a recruit in Regiment of Artillery of Indian Army on 29 September 1967 and was found medically and physically fit as per prescribed standards in medical category "*SHAPE-1*". Before commencement of basic military training he was again subjected to medical examination and was declared medically fit as he was found to be suffering from no disease vide Primary Medical Examination Report, *Annexure A1*.

07. During his stay of eight years in the Indian army, the applicant served in High Altitude/Field/CI Ops areas and also took part in Indo-Pak war of 1971. According to the applicant, he acquired the disability "*Hypermetropia Rt Eye with Amblyopia Partial*" while posted in hard field area of Uri Sector (J&K) in December 1971 owing to snow and other environmental and climatic factors which were not conducive for his eyes.

08. Applicant was brought before a Release Medical Board and having been found by it to have incurred disability "*Hypermetropia Rt Eye with Amblyopia Partial*" (20% for two years), was invalidated out from service with effect from 02 November 1975 in low medical category "SHAPE-3(P)" after having put in eight years of service. The Medical Board assessed disability of the applicant at 20% for two years vide its findings dated 03 July 1975, *Annexure A4/R1*, but inspite of the fact that in the report of primary medical examination or other official records there is no note to indicate that the applicant was suffering from any such disability or it could not be detected at the time of his entry in the service, the Invalidating Medical Board opined that the disability is constitutional in nature and has no connection with service conditions of the applicant. Relying upon the findings of the Invalidating Medical Board, the third respondent denied to the applicant benefit of disability pension vide order dated 28 November

1975, *Annexure A5*. Legal notice dated 20 March 2013, *Annexure A6*, served by the applicant upon the respondents, through his counsel, also failed to evoke positive response. It is in these circumstances that the applicant has been forced to approach this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (55 of 2007).

09. In their joint reply, the respondents, while admitting that the applicant was enrolled in the Indian Army on 29 September 1967 and was discharged from service with effect from 02 November 1975 in a low medical category, have stated that the disability of 20% (for two years) suffered by the applicant having been found to be neither attributable to nor aggravated by military service his claim for disability pension has rightly been rejected by the third respondent.

10. We have heard learned counsel for the parties at considerable length and with their assistance have also examined the record.

11. It is of immense benefit to refer, at the very outset, to *Dharamvir Singh versus Union Of India* (supra). Appellant in this case was boarded out of service on the ground of 20% permanent disability but was allowed no disability pension because the Medical Board had opined that the disability was not related to military service. Representations made by him were rejected on the ground that the disability was neither attributable to nor aggravated by military service. His claim for disability pension was allowed by a learned Single Judge of the High Court of Himachal Pradesh but was negatived by a Division Bench in Letters Patent Appeal. The Hon'ble Apex Court, on being approached by the appellant, scrutinized the law and rules applicable to the subject and while allowing the appellant's claim for disability pension, laid down the law as follows:

> " (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."

12. The view expressed by the Hon'ble Supreme Court in ***Dharamvir Singh*** (supra) is re-echoed in Sukhwinder Singh (supra) in the following manner:

> ''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."

13. Similarly, in ***Rajbir Singh*** (supra) the Hon'ble Apex Court has held as under:

> "15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the

> Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service.
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> This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so.
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> Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service.
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> The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same.
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> The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."

14. *Angad Singh Tatia* and *Manjeet Singh* (supra) have re-affirmed the view expressed in *Dharamvir Singh* and *Rajbir Singh* (supra).

15. It needs no reiteration that if there is no note or record showing the disease or disability at the time of his entry in the Indian Army, the applicant is to be presumed to be in sound physical and medical condition at the time of entering service and subsequent deterioration

in his health is to be presumed to be due to conditions of service. It is not in dispute that the applicant was enrolled in the Indian Army only after he was found medically fit in a medical examination at the time of his enrollment and another before commencement of basic military training. In any case, respondents have not been able to bring to our notice any document to suggest that the applicant was under treatment of the disease referred to in the findings, *Annexure A4/R1*, of the Release Medical Board or that by heredity he was suffering from any such disease at the time of his entry into the Indian Army. In the absence of such a note in the service record at the time of joining of the applicant it was incumbent on the part of the Medical Board to call for and look into applicant's service record before forming an opinion that the disease could not have been detected on medical examination prior to the joining of applicant. Respondents, however, have neither annexed with their response nor have been able to show during the course of hearing any document suggesting or indicating that service record of the applicant was called for and looked into by the Release Medical Board before concluding that applicant's disability was neither attributable to nor aggravated by military service. It is not decipherable from the record that the Release Medical Board did take into account the service conditions and places of posting of the applicant before acquirement of the noted disease. Even during the course of hearing no such record has been brought forth by the respondents.

16. A very specific assertion made by the applicant in para 4(c) of the Original Application is that during his stay of eight years in the Indian army, he served in High Altitude/Field/CI Ops areas and also took part in Indo-Pak war of 1971. According to the applicant, he acquired the disability "*Hypermetropia Rt Eye with Amblyopia Partial*" while posted in hard field area of Uri Sector (J&K) in December 1971 owing to snow and other environmental and climatic factors which were not conducive for his eyes. The respondents have not been audacious enough to refute or controvert this averment and in para

4(c) of their response they have come out with a bizarre stand saying that keeping in view the role assigned to the Indian army a "*soldier is bound to serve under different climatic conditions according to the contingencies of the service but thereby one should not forget that each and every facility/amenity is provided to the soldiers*". The respondents, nevertheless, have admitted that the applicant did serve in field area and had complaints of water irritation of both eyes and diminishing vision of right eye which did not improve even after wearing glasses.

17. A glance across the findings, *Annexure A4/R1*, of the Release Medical Board would reveal total non-application of mind by the Board. In Part-I, Column No. 02, the applicant is shown to have clearly stated that the disability was acquired by him during his posting in Uri Sector (J&K) in December 1971. The document, *Annexure A4/R1*, is conspicuously silent as regards the basis on which this very categorical assertion of the applicant has been negatived or disbelieved. However, the Medical Board in Part-III, Column No.1, replied the question "Did the disability/ies exist before entering service?" and in Column No. 3(e) another question "Was the disability attributable to the individual's own negligence or misconduct, if so, in what way?", in the negative.

18. Learned Senior Panel Counsel appearing on behalf of the respondents has relied upon OA 1145 of 2014 *Rajender Singh Vs Union of India and others*, decided on 18 January 2016 by a Coordinate Bench of this Tribunal wherein the applicant suffering from "HYPERMETROPIA WITH AMBLYOPIA & BILATERAL MACULAR PIGMENTATION" has been denied the benefit of disability pension.

19. The effort, in our view has failed. After perusal of the above-mentioned order we find that claim for disability pension was denied to the applicant therein by holding as under:

> "10. We are of the view, that, the presumption and onus of proof for non-entitlement placed upon the respondents by Dharamvir

> Singh's judgment is fully met by their plea, that, eye diseases with refractive errors are not normally affected due to military service, specially if there has been no injury or no history of certain types of work environment which may lead to such diseases. Such diseases are age related, also affect a large part of the civilian population and even with the present level of medical science it is well neigh impossible to accurately predict the onset or otherwise of these diseases at a later stage of life.
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> 11. It is not our case to state, that, other diseases which affect military personnel do not affect members of the civilian population. However, the guiding factor is the existence of a causal connection between the requirement of military service and the onset of the disease or injury. Causal connection with military service in the case of eye diseases with OA 1145 of 2014 Rajender Singh Vs UOI & Ors, 7 refractive error would need to be established for claim of disability to be attributable or aggravated with military service. In the absence of any such evidence and based on the above reasoning, the onset of such ailments would lie in the domain of natural aging process. In this particular case, in the absence of any causal connection, we hold that the disease "HYPERMETROPIA WITH ANISOMETROPIA RIGHT EYE (H19)" is not attributable to military service."

20. It needs to be pointed out that ***Rajender Singh Vs Union of India and others*** (Supra) came to be decided in the afore-mentioned manner because therein there was no material to show that the applicant had served in such climatic field areas as could affect his vision. In the case in hand, on the contrary, there is admission of the respondents themselves that the applicant did serve in field area and had complaints of water irritation of both eyes and diminishing vision of right eye which did not improve even after wearing glasses and, at the same time they have not denied an assertion made by the applicant that he acquired the disability "***Hypermetropia Rt Eye with Amblyopia Partial***" while posted in hard field area of Uri Sector (J&K) in December 1971 owing to snow and other environmental and climatic factors which were not conducive for his eyes. In this view of the matter, in our opinion, case of the applicant is covered by ***Bhale Ram Vs Union of India and Others*** in OA 1035 of 2014 decided by another Bench of this Tribunal on 18.08.2015 wherein it has been held as under:

> "6. We are aware that this Tribunal in some earlier cases wherein the petitioners suffered from the disabilities like the one suffered by the petitioner herein, have taken a view that HYPERMETROPIA & AMBLYOPIA are the developmental disorders resulting in refractory

> error in the eyes and the disability suffered because of these diseases is unaffected by service conditions, and, thus, neither attributable to, nor aggravated by the military service. At the same time, we cannot lose sight of the fact that this case has some peculiar facts which, for the reasons recorded hereinafter, call for a little departure from the said view.
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> 10. One can well imagine the plight of a member of the Armed Forces losing vision of both the eyes after rendering so long service in the border areas for safeguarding the security of the country. In our considered opinion, taking a stereotyped view in the matter and to reject the claims in such cases would be nothing but miscarriage of justice. We would be failing in our constitutional responsibility in case such Army personnel are not granted disability benefits liberally in the spirit of the authoritative pronouncement of the Apex Court in Civil Appeal No. 4949 of 2013 (arising out of SLP(C) No. 6940 of 2010), titled Dharamvir Singh v. Union of India and others, decided on 2nd July, 2013, reported as (2013) 7 SCC 316, also followed by the Hon'ble Supreme Court in its subsequent decision, by deviating the earlier view taken by this Tribunal in case of such disabilities and diseases. It is pertinent to mention that the said view is based upon the very nature of the diseases 'HYPERMETROPIA & AMBLYOPIA', which are considered as hereditary, but, in itself does not take case of the peculiar facts and circumstances of a particular case whereby disablement of OA 1145 of 2014 Rajender Singh Vs UOI & Ors, 8 permanent loss of vision is suffered by a member of the Armed Forces after putting long years of service in high altitude border areas. Notwithstanding the view taken by the IMB that the disablement is due to a constitutional condition and even if by its very nature it is considered hereditary, in our considered view there is nothing to deny and it also cannot be ruled out that the disability, over a long period the petitioner remained posted and served in snowy high altitude border areas, must have got aggravated due to the service conditions. Therefore, it would be just, appropriate, as well as in the interest of justice to ignore the opinion of the Invaliding Medical Board in this case. Even otherwise, as per law the opinion of the Medical Board is required to be considered and the Courts/Tribunals should not feel strictly bound by such an opinion."

21. Further, case of the applicant is also covered by ***Surinder Kaur versus Union Of India***, O.A. No. 95 of 2015, decided by a Coordinate Bench of this Tribunal (to which one of us, Lt. Gen. Sanjiv Chachra, Administrative Member) was a party, on 29 August 2017.

22. Consequently, this Original Application is allowed. Order dated 28 November 1975, *Annexure A5*, and part of findings, *Annexure*

*A4/R1*, of the Medical Board holding disability of the applicant as neither attributable to nor aggravated by military service, are quashed/set aside. It is held that the applicant is entitled to get disability element of pension at the rate of 20%, for two years from 2.11.1975 ( i.e. date of his discharge). However, it shall be open to the respondents to hold a Re-Survey Medical Board (RSMB) in order to assess the future disability of the applicant. In that case, the applicant shall be under an obligation to appear before the RSMB and his future entitlement to disability element of pension shall depend upon the findings of the RSMB.

23. The respondents are directed to calculate and disburse the arrears accruing to the applicant within a period of **four months** from the date of receipt of a certified copy of this order by the learned counsel for respondents, failing which, the arrears shall carry interest @ 8% per annum from date of expiry of the time allowed, till actual disbursement thereof. The other direction to hold RSMB shall also be complied with by the respondents in the aforesaid period of **four months**.

24. In the facts and circumstances of the case there shall be no order as to costs.

**( Sanjiv Chachra)** **( M.S. Chauhan)**
**Administrative Member** **Judicial Member**

06 September 2017

**Whether for future use to be put on Internet Yes/ No**