ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

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OA 638 of 2015

Amar Singh …… Applicant(s)
Vs
Union of India and others …… Respondent(s)

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For the Applicant (s) : Mr Bhim Sen Sehgal, Advocate
For the Respondent(s) : Mr VK Chaudhary Sr PC

CORAM:
HON'BLE MR JUSTICE MS CHAUHAN, MEMBER (J)
HON'BLE LT GEN MUNISH SIBAL, MEMBER (A)

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ORDER

15.09.2017

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Through the instant Original application filed under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant has prayed for issuance of direction to the respondents to grant him disability element of pension for 50% disability from the date of invalidation i.e. 1.9.2002 onwards for life as findings of the Medical Board are that "the disability of the applicant for two years was aggravated by the stress and strains of the military service which was over-turned by the PCDA (P). According to him intervention by PCDA (P) is wrong and illegal in view of the judgement of the Hon'ble Apex Court in the case of ***Ex Sapper Mohinder Singh v. UOI*** CA 163 of 1993 decided on 14.1.1993. It is further prayed that the orders dated 18.2.2003 and 28.4.2015 (Annexures A/2 and A/7) whereby the claim of disability element of pension was rejected be quashed.

Brief facts of the case which forced the applicant to approach this Tribunal for the rederessal of his grievance are that the applicant was enrolled in the Army on 4.9.1982 and started his basic training at Sikh

Light Infantry Centre Fatehgarh Cantt. The applicant was again medically examined before the start of the training at the Training Centre, as per the procedure in vogue and after his having been found medically fit was allotted service number and after completion of other formalities of enrolment was inducted into training as a Recruit. The applicant served in extreme climatic conditions as well as in field areas and high altitude areas. While he was on active service at Jalandhar, the applicant suffered a medical problem which was diagnosed as "Diabetes mellitus" and hwas downgraded to lower medical category CEE (T) for six months and thereafter the applicant was sent to URI sector where his medical condition aggravated and he was downgraded to medical category CEE (P) and was brought for discharge prior to completion of tenure of rank of Havaldar in LMC. He was discharged on 1.09.2002 under Army Rule 13(3) Item III (v) read in conjunction with Army Rule 13 (2A).

The applicant was brought before the RMB on 27.5.2002 which adjudged the disability as aggravated by military service due to stress and strain and assessed the disability of the ID at 15% for two years. As the applicant was post-1996 soldier, minimum 50% disability pension as per instructions dated 31.1.2001 for life was to be given as he was invalided out of the military service before completion of his tenure of Havaldar which is 24 years. The applicant was accordingly granted service pension for 20 years 4 months and 22 days. The applicant thereafter received a letter on 25.9.2002 that his claim for disability pension has been forwarded to the competent authority (Annexure A/1) on 25.9.2002. However, the PCDA rejected his disability pension claim for the reason that the disability is neither attributable to nor aggravated by service and hence not entitled to get disability pension under the rules.

In response to notice, respondents put in appearance and contested the case to justify the rejection of the claim of the applicant by urging the applicant was not entitled to the relief claimed as the ID was not attributed/ aggravated by military service and that the disability was less than 20%.

From the perusal of Annexure A/3 which is Disability Pension First Claim Opening sheet, it is clear that it is MA (P) which overturned the findings of the Medical Board that ID is aggravated due to stress and strains of the military service. The only ground of rejection was thus that the disability was re-adjudicated by the PCDA and it declared the ID as neither attributable to or aggravated by military service.

From the above discussion, it appears that the PCDA has over turned the findings of the Medical Board which cannot be permitted.

We have heard the learned counsel for the parties.

The issue involved in this case is no longer res-integra as the Hon'ble Supreme Court in the cases of ***Mohinder Singh case (supra); UOI v. Baljit Singh*** 1996(11) SCC 315 and ***UOI v. Dhir Singh Chhinna*** AIR 2003 SC 1197 has clearly held that the pension sanctioning authority cannot interfere with the opinion of the competent medical authority on the aspect of attributability or aggravation or extent etc.

In **Ex. Sapper Mohinder Singh Vs. Union of India** in **Civil Appeal No. 164 of 1993, decided on 14.01.1993** the following observations have been made:-

> *" From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz., whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case*

of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

The submission that the ID in question was not attributable to or aggravated by the military service is not sustainable in view of the law laid down by the Hon'ble Apex Court in ***Dharamvir Singh v. UOI and other***s (2013) 7 SCC 316 . The applicant in this case when enrolled was in a fit condition and the disability has accrued to the applicant during service. He was found physically and medically fit and no note adverse to his health was recorded by the Medical Board at that time. On perusal of the RMB proceedings, we also find that no reason whatsoever has been given as to why the disability of the applicant is not to be considered as attributable to or aggravated by the military service. As per law laid down by the Apex Court in ***Dharamvir Singh's case*** *(supra)*, a presumption can be drawn in favour of the applicant that the disability in question was suffered by the applicant during service and it can be considered as either attributable to or aggravated by the military service unless or otherwise the respondents are able to prove to the contrary for which the onus lies upon the respondents. In such and similar cases, the proposition of law is being consistently followed by the Apex Court as well as the Courts below, including this Tribunal and a catena of decisions have been given in this regard. In the instant case, there is no contrary evidence on record. Therefore, the law

laid down by the Apex Court in ***Dharamvir Singh's*** *case* is fully applicable to the facts of the present case.

The issue for grant of disability pension in cases where the disability is less than 20% has been deliberated in detail by this Tribunal and a detailed order passed on **19.09.2016**, in **OA No.621 of 2014**, titled **Bharat Kumar vs. Union of India & others**, decided along with two other connected matters wherein letter dated 20.7.2006 was dealt with. Letter dated 20.7.2006 says that the benefit of rounding off where disability is even one percent (commonly referred to as less than 20%) has been granted only to those individuals who have been invalided out/ prematurely discharged from service in low medical category on or after 1.1.1996.

In view of the above enunciation of law, in our opinion the rejection of the disability pension claim cannot be sustained and is liable to be quashed.

In view of the above discussion, the OA is allowed and order dated 18.2.2003 and 28.4.2014 (Annexures A/2 and A/7) are quashed and the applicant is held entitled to disability element of disability pension on the basis of disability as assessed by the competent Medical Board for two years from 1.9.2002 alongwith the benefit of rounding off as per the judgement of the Supreme Court in ***UOI v. Ram Avtar*** (CA No. 418 of 2012 decided on 10.12.2014 within a period of three months from the date of receipt of copy of this order by the learned Government counsel failing which the arrears shall carry interest @ 8% per annum from the date of this order.

To assess the future disability of the applicant, the respondents are directed to hold RSMB of the applicant within four months from today

after due intimation to him, and his future disability will abide the recommendations of the Board.

No costs.

(Munish Sibal)
Member (A)

(MS Chauhan)
Member (J)

15.09.2017
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