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

T.A. NO. 74 OF 2014(C.W.P. NO. 10673 OF 2002)

Rajesh Kumar Rana, Ex. Dfr/Clk. No. 1062648

…..Applicant

Versus

Union of India & Others

…..Respondents

For the applicant: Shri Vivek S. Dadwal, Advocate

For the respondents: Shri Satyawan Ahlawat, Central Government Counsel

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CORAM:

Hon'ble Shri Justice M.S. Chauhan, Member (J).

Hon'ble Lt. Gen. Munish Sibal, Member (A).

O R D E R

September 22, 2017

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01. Is the applicant entitled to disability pension on account of the diseases *Primary Hypertension* & *Obesity*, stated to have been acquired by him during military service?, is the question to a seek an answer to which applicant had invoked extra-ordinary jurisdiction of the High Court of Punjab & Haryana, at Chandigarh by way of Civil Writ Petition No. 10673 of 2002 under Articles 226 and 227 of the Constitution of India. By operation of Section 34 of the Armed Forces Tribunal Act, 2007 (55 of 2007), the Civil Writ Petition has been transferred to this Tribunal.

02. Applicant had joined Indian Army on 19 May 1979 and after completing 20 years 11 months and 11 days of service, was discharged on 30 April 2000 because he was placed in low medical category "CEE (Temp) on 07 August 1998 for six months, again vide

Medical Board held on 07 February 1999 for another six months and his medical category "CEE" was declared permanent with effect from 07 August 1999. Medical Board held on 10 March 2000 (Annexure R1) found the disability to continue. His discharge was ordered under Rule 13(3)(III)(v) of the army Rules, 1954 after considering the reply submitted by the applicant to the show cause notice dated 05 January 2000 (Annexure P5). No sheltered employment could be given to the applicant because none was available. Applicant's claim for disability pension was rejected vide PCDA(P), Allahabad letter dated 07 August 2000 (Annexure R2) as the disability earned by him was stated to be neither attributable to nor aggravated by military service and was not connected with service. However, at the time of applicant's enrolment no note was recorded to say that the applicant was suffering from any such disability.

03. Fact situation, as aforesaid, is not disputed by the respondents in the written reply and the only ground pleaded by them is that the disability earned by the applicant was neither attributable to nor aggravated by military service and was not connected with service.

04. We have heard learned counsel for the parties and have also examined the record.

05. Applicant's learned counsel has pointed out that the applicant was hale and hearty at the time of his enrolment and was admitted to the military service only after he was found physically and medically fit. No note at that time was recorded to the effect that the applicant was suffering from Primary Hypertension or obesity or any other disease. Not only this, till 07 August 1998 no such disease was detected. Learned counsel has also pointed out that the applicant participated in '*Operation Rakshak'* in the year 1990 and even after detection of the disability/disease he was made to participate in '*Operation Vijay'* in Kargil in the year 1999. While taking us through the proceedings of Invalidating Medical Board dated 10 March 2000, Annexure R1, learned counsel has pointed out that besides the above, the applicant also participated in '*Operation Trident'* from 03 January 1987 to 06 February 1987 and remained posted in field area (Suratgarh) from 02 November 1993 to 30 December 1995. It is also pointed out that the Invalidating Medical Board did not call for the service record of the

applicant to ascertain whether or not was the applicant suffering from any disease/disability at the time of his entry into military service, nor has the Board recorded its opinion that the disability/disease was hereditary and/or could not be detected at the time of enrolment of the applicant. According to the learned counsel, in view of the cited circumstances the disability suffered by the applicant has to be deemed to be attributable to and aggravated by military service as has been held by the Hon'ble Supreme Court in *Dharamvir Singh versus Union of India*, (2013) 7 Supreme Court Cases 316.

06. On the other hand, learned Government counsel points out that there is no record to show participation of the applicant in 'Operation Vijay' and that the Invalidating Medical Board has rightly held the disability as not connected to military service because '*Obesity'* is direct outcome of dietary irregularities and sedentary life style and '*Primary Hypertension'* is the consequence of '*Obesity*'. Learned counsel also relies upon *Union of India and Anr. V. Baljit Singh*, (1996 (11) SCC 315) to point out that in this judgment the Hon'ble Apex Court has taken note of Rule 173 of the Pension Regulations which is akin to Para 153 of Pension Regulations for IAF (Rules) and it was observed that where the Medical Board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable thereto, the High Court's direction to the Government to pay disability pension was not correct. Reference on behalf of the respondents has also been made to *Satinder Singh Vaid versus Union of India*, Original Application No. 1376 of 2014, decided on 27 October 2015 and it has been urged that in this case it was observed that Hypertension being direct consequence of obesity the individual cannot be granted disability pension.

07. No other or further point has been urged.

08. Regulation 173 of Pension Regulations for the Army, 1961 (for short, the Pension Regulations) relating to the primary conditions for the grant of disability pension reads as follows:

> "**Regulation 173**. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.

> The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

09. From a bare perusal of the cited Regulation, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is attributable to or aggravated by military service and (ii) whose disability is assessed at 20% or over disability unless otherwise it is specifically provided.

10. Whether or not a disability is `attributable to or aggravated by military service' is to be determined under the "Entitlement Rules for Casualty Pensionary Awards, 1982", as shown in Appendix-II. Rule 5 reads as under:

> "**Rule 5**. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:
> PRIOR TO AND DURING SERVICE
> a) member is presumed to have been in sound physical and mental condition upon entering except as to physical disabilities noted or recorded at the time of entrance.
> b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service."

11. From Rule 5 we find that a general presumption is to be drawn that a member of service is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of his entrance/enrolment. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

12. According to Rule 8 attributability /aggravation has to be conceded if causal connection between the disability/death and military service is certified by appropriate medical authority. Rule 8 reads as follows:

> "**8.** Atributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority."

13. According to Rule 9, the claimant cannot be called upon to prove his entitlement and benefit of reasonable doubt shall be allowed to him. The Rule reads as under:

> "**Rule 9**. ONUS OF PROOF- The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

14. Rule 14 relating to diseases reads as follows:

> "**Rule 14. DISEASE** - In respect of diseases, the following rule will be observed:-
> (a) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.
> (b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.
> (c) If a disease is accepted 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."

15. As per clause (b) of Rule 14 a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. As per clause(c) of Rule 14 if a disease is accepted 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.

16. Rule 423 of the "General Rules of Guide to Medical Officers (Military Pensions) 2002, deals with "attributability to service". Relevant portion of the rule reads as follows:

> "423. Attributability to Service:
> (a) For the purpose of determining whether the cause of a disability or death 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. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not

mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in armed forces. In case of injuries which were self inflicted or duty to an individual's own serious negligence or misconduct, the Board will also comment how far the disability resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board/medical officer will specify reasons for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:-

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it s not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).”

17. From a perusal of Rule 423 it comes out that following procedure has to be followed by the Medical Board:

> (i) Evidence both direct and circumstantial to be taken into account by the Board and benefit of reasonable doubt, if any would go to the individual;
>
> (ii) a disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of individual's acceptance for service in Armed Forces.
>
> (iii) If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease will not be deemed to have been arisen during military service the Board is required to state the reason for the same.

18. It is of immense benefit to refer here 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).
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> (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."

19. The view expressed by the Hon'ble Supreme Court in *Dharamvir Singh* (supra) is re-echoed in *Sukhwinder Singh versus Union Of India*, (2014) 14 Supreme Court Cases 364, 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 authorising 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."

20. Similarly, in *Union Of India and another versus Rajbir Singh etc.*, 2015 SCC OnLine SC 119, 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.
>
> 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."

21. It shall stand repetition that the applicant was admitted to the military service only after he was found physically and medically fit. No note at that time was recorded to the effect that the applicant was suffering from Primary Hypertension or obesity or any other disease. Not only this, till 07 August 1998 no such disease was detected. It has also been averred by the applicant that he participated in 'Operation Rakshak' in the year 1990 and even after detection of the disability/disease he was made to participate in 'Operation Vijay' in

Kargil in the year 1999. Even in the proceedings of Invalidating Medical Board dated 10 March 2000, Annexure R1, the applicant is shown to have disclosed that besides the above, he also participated in 'Operation Trident' from 03 January 1987 to 06 February 1987 and remained posted in field area (Suratgarh) from 02 November 1993 to 30 December 1995. Proceedings of the Invalidating Medical Board do not indicate that the Board called for the service record of the applicant to ascertain whether or not was he suffering from any disease/disability at the time of his entry into military service, nor has the Board recorded its opinion that the disability/disease was hereditary and/or could not be detected at the time of enrolment of the applicant. The respondents though have stated in the written reply that as per their record the applicant did not participate in 'Operation Vijay' but they have not denied applicant's participation in other operations and his posting in field area (Suratgarh). The Invalidating Medical Board has accepted applicant's declaration that disease/disability was not in existence at the time of his enrolment as also participation of the applicant in various operations and his posting in field area and has declared that the disease/disability was detected on 07 August 1998 at Pathankot. The Board, however, has given no reasons to support its conclusion that the disease has no connection with the military service. The Board has assessed the disability at 20% for two years. In view of these circumstances no benefit can be derived by the respondents from Union *of India and Anr. V. Baljit Singh* (supra) and the disability suffered by the applicant has to be deemed to be attributable to and aggravated by military service as it has persisted since 07 August 1978. No Resurvey Medical Board is shown to have been convened.

22. Reliance by the respondents on *Satinder Singh Vaid versus Union Of India* (supra) is absolutely misplaced because this is distinguishable on facts. In this case it is recorded in para 11 that the applicant therein was first diagnosed as a patient of Obesity and thereafter he had acquired disability of Hypertension whereas in the instant case it is not so. Onset of both the diseases is recorded as 07 August 1978.

23. In view of what has been said and discussed above, we allow the application, quash/set aside order dated 05 September 2000, *Annexure P10* and order dated 14 January 2002, *Annexure P12*, as also

part of the findings of the Release Medical Board, *Annexure R1*, pertaining to its opinion that applicant's disability is neither attributable to nor aggravated by military service, and hold that the applicant is entitled to disability pension with effect from the date of his discharge/invalidation till a Resurvey Medical Board is convened, and direct the respondents to calculate the disability pension payable to the applicant on the basis of disability as assessed by the Release Medical Board vide *Annexure R1*, after allowing him all consequential benefits, including rounding off to 50% as per directions of the Hon'ble Supreme Court of India rendered in the case of *K.J.S. Buttar v. Union of India*, 2011(11) SCC 429 and *Union of India v. Ram Avtar*, Civil Appeal No. 418 of 2012, decided on 10.12.2014 read with judgment of this Tribunal *Labh Singh v. Union of India and others*, OA No.1370 of 2011 decided on 22.12.2011, and, *Ved Parkash v. Union of India* and others, OA No.1960 of 2012, decided on 03.08.2012 and release the same to the applicant within a period of **four months** from the date of receipt of a copy of this order by the learned Government counsel, failing which the arrears of pension shall carry interest @ 8% per annum from the date of these fell due.

24. The respondents, if so advised, may convene a Resurvey Medical Board at the earliest possible to re-assess applicant's disability and grant of future disability pension shall abide re-assessment to be done by the Resurvey Medical Board.

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

[**Lt. Gen. Munish Sibal**] [**Justice M.S. Chauhan**]

Member (A) **Member (J)**

22 **September 2017**

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