

**ARMED FORCES TRIBUNAL, REGIONAL BENCH CHANDIGARH
AT CHANDIMANDIR
(THROUGH VIDEO CONFERENCING)**

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OA 692 of 2021

Wednesday, the 22nd day of Dec, 2021

CORAM:

**HON'BLE MR JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (J)
HON'BLE VICE ADMIRAL HCS BISHT, MEMBER (A)**

Tejbir Singh

.....

Applicant

(By Mr. Ajay Sheoran, Advocate)

Versus

Union of India and others

.....

Respondents

(By Mr. M. M. Pandey, CGC)

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ORDER

Justice Dharam Chand Chaudhary Member (J) Oral:

By means of the present application, following relief (s) have been sought to be granted:-

- (i) Direction to the respondents for quashing the offending part of impugned Release Medical Board dated 31.01.2020 (Annexure A-2) whereby the disability of the petitioner has been declared as neither attributable to nor aggravated by military service and letter dated 01.05.2020 and letter dated 23.09.2020 (Annexure A-3 and A-4) whereby the respondents have rejected the claim of the applicant for the grant of disability pension;
- (ii) Directions to the respondents to release the disability pension @ 50% against 40% disability w.e.f. 01.05.2020 as per rounding off policy issued on the subject for life with interest @ 18% per annum.

The facts in a nutshell are that the applicant joined Military service on 31.12.2001 in a fit medical condition. During the course of his service, he incurred disability '**CORONARY ARTERY DISEASE AAMI (100-100)**' and thus, was finally released from service on 30.04.2020. At the

time of release, his disability was assessed @ 40% for life and held to be neither attributable nor aggravated by military service.

The respondents, therefore, rejected the claim of the applicant for the grant of disability pension on the grounds inter-alia that the disability was neither attributable to nor aggravated by military service.

Learned counsel representing the applicant during the course of arguments has submitted that the prayers made in the application are squarely covered by series of decisions of the Hon'ble Supreme Court, including *Dharamvir Singh Vs Union of India* (2013) 7 SCC 316, *Three Judge Bench decision* in Civil Appeal 2337/2009 *Union of India Vs Chander Pal* decided on 18-09-2013, *Union of India Vs Rajbir Singh* (2015) 12 SCC 264, *Union of India Vs Angad Singh Titaria* (2015) 12 SCC 257, *Union of India Vs Manjeet Singh* (2015) 12 SCC 275, Civil Appeal 4409/2011 *Ex Hav Mani Ram Bhaira Vs Union of India* decided on 11-02-2016, Civil Appeal 1695/2016 *Satwinder Singh Vs Union of India* decided on 11-02-2016 and *Ex Gnr Laxmanram Poonia Vs Union of India* (2017) 4 SCC 697. The Applicant further submits that his claim is also supported by the applicable rules.

In rebuttal, learned Senior Panel Counsel has argued that the claim of the applicant is neither attributable to nor aggravated by military service and stands legally rejected.

We have considered the rival submissions made by learned counsel on both sides in the light of the law laid down by the Apex Court in *Dharamvir Singh Vs Union of India (Supra)* and the relevant rules. The relevant extract of the judgment reads as follow :-

“Para 30...In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service...”

Para 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 appellant 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 "Generalised 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...

Para 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 changes 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 causal connection with the service conditions...”

It is proved beyond all reasonable doubt that at the time the applicant entered into military service, this type of disease/disability did not exist.

Therefore, we are not satisfied with the findings that the disability is neither attributed nor aggravated by military service given by the Medical Board in its report for the reason that at the time of enrolment of the applicant in the Army, no such disease was in existence nor could be detected by the Medical Board which had conducted the medical examination at that time. We are also not in agreement with the submissions made by learned Senior Penal Counsel that the applicant at the time of his enrolment being in young age and it is due to this reason that the disease could not be detected at that time.

On the other hand, as per the opinion of the Medical Board itself, the same is aggravated with the advancement of the age of the applicant which in our opinion at such a stage when he was in military service. Therefore, it cannot be believed by any stretch of imagination that the applicant was suffering from this disease at the time of his enrolment in military service. However, for the reasons stated in the medical report, the same could not be detected at that time in view of he was of young age. The present rather is a case where in our considered opinion, the disease is not only attributable to military service but aggravated also by such service. The present, therefore, is a case which is squarely covered by the judgment of the Hon'ble Supreme Court in **Dharamvir Singh's case** cited supra. Even the applicant had also given his willingness for sheltered appointment, however, the commandant has not forwarded the same also to competent authority for shelter appointment.

Considering the law laid down by the Supreme Court and also the attending circumstances, the rejection of the claim of the applicant is set

aside and the applicant is held entitled to disability pension @ 50% as against 40% for life after being rounded off as per the ratio of the judgment of the Supreme Court in *Civil Appeal No 418/2012 Union of India Vs Ram Avtar* rendered on 10.12.2014 subject to verification. The arrears are directed to be released to the applicant within a period of three months from the receipt of certified copy of this order by the Respondents/OIC Legal Cell, failing which the same shall carry interest @ 8% from the date of this order.

It is made clear that in case the applicant is already in receipt of the service pension or service element for the same spell of service for which he is entitled, in that case, he shall be entitled only to the disability element of disability pension only.

No order as to costs.

(HCS Bisht)
Member (A)
22nd December, 2021
RR

(Dharam Chand Chaudhary)
Member (J)