

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

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OA 640 of 2015

Tuesday, the 28th day of Aug, 2018

CORAM:

HON'BLE MR JUSTICE MOHAMMAD TAHIR, MEMBER (J)

HON'BLE LT GEN MUNISH SIBAL, MEMBER (A)

Ravinder Singh

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Applicant

(By Mr Rajesh Sehgal, Advocate for Mr Bhim Sen Sehgal, Advocate)

Versus

Union of India and others

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Respondents

(By Mr Gurpreet Singh CGC)

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ORDER

This OA has been filed under Section 14/15 of the Armed Forces Tribunal Act, 2007, impugning letters dated 03.05.2007 and 19.02.2009 (Annexures A-3 and A-4) whereby the disability pension claim of the applicant has been rejected and for grant of disability pension @ 20% to be rounded off to 50% w.e.f. 27.04.2006 for life.

2. The applicant was enrolled in the Army on 07.06.2005 and was invalided out from service on 26.04.2006. While undergoing military training, he suffered from the disease "***SYMPTOMATIC R-PARTIAL SEIZURES***". He was admitted to Military Hospital Devlali on 04.10.2005 for the said disease. Thereafter he was shifted to INS Ashvani Bombay. On the recommendations of the Classified Specialist, he was brought before Invaliding Medical Board (IMB) which recommended the invalidation of the applicant from the Army service due to the said disease and assessed his percentage of disability 15-19% permanent as neither attributable to nor aggravated by military service and not connected with military service being congenital disease. Hence, the applicant was invalided out from service w.e.f. 27.04.2006 under Army Rule 13(3) item IV. Disability pension claim of the applicant was rejected on the ground that the said disability as recorded in IMB proceedings has been found to be neither attributable to nor aggravated by military service with 15-19% disability for life". Thereafter,

the applicant got served legal notice dated 23.12.2008 for grant of disability pension which was rejected vide order dated 19.02.2009. 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 congenital disability and not connected with 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. 5605 of 2010 Sukhvinder Singh vs. UOI** decided on 25.06.2014.

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 in the year 1995 the applicant was diagnosed as a case of **"SYMPTOMATIC R-PARTIAL SEIZURES"** and was finally invalided out in Low Medical Category 'EEE'. The disability of the applicant was assessed 15-19% permanent and considered as neither attributable to nor aggravated by military service and not connected with military service being congenital disease.

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. 13732-33 of 2015) decided on 12.5.2015); Union of India v. Angad Singh Titaria (CA No. 11208 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. Now a question arises as to whether a personnel suffering from the disability of less than 20% is entitled to the disability pension or not? According to the Regulation 173 of the Pension Regulations for the Army, a person suffering from the disability of 20% or above, is entitled to the disability pension provided he was invalided out of service on account of the

disability but in the case of ***OA No. 2146 of 2012 “Balwinder Singh v. UOI and others”*** decided on **26.03.2015**, this Regional Bench of Chandigarh, has expressed the following opinion:

“ Based on above, we are of the opinion that since the petitioner was invalided out from service in low medical category, his disability should be at least 20% as against 11-14% disability assessed by the invaliding Medical Board.”

9. In taking such a view, reliance was placed on the judgment of the Hon’ble Supreme Court in ***Civil Appeal No. 5605 of 2010, “Sukhwinder Singh v. UOI and others”*** decided on **25.06.2014**. In Paragraph 9 whereof the following observations were made:-

“Fourthly, whenever 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 20%. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.”

10. On the basis of the above case law of the AFT Regional Bench Chandigarh as well as of the Hon’ble Supreme Court, we are of the opinion that the disability which has been assessed by the IMB at less than 20% (i.e. 15-19%) can be deemed to be 20%. The applicant is further entitled to disability pension taking the same to be 20% for life which is rounded off to 50% 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**.

11. Now the question arises as to from which date the applicant is entitled to the disability pension on the basis of the above rate. In this reference it is to be seen as to on which date his right to get disability pension @ at least 20%, was recognized. His right was recognized or accrued on the date of pronouncement of judgment by the Hon’ble Supreme Court in ***Sukhwinder Singh’s case (supra)*** which was decided on

25.06.2014. Hence, in our view the starting point of cause of action being entitled to get a minimum of 20% of disability pension came to be recognized by judicial pronouncement made by the Hon'ble Supreme Court in Sukhwinder Singh's case (*supra*) which was decided on 25.06.2014

12. Therefore, in our view, the applicant is entitled to the arrears of disability pension @ 50% w.e.f. **25.06.2014** on which date right was accrued to him by virtue of the pronouncement made by the Hon'ble Supreme Court in the case of ***Sukhwinder Singh's case (supra)***.

13. In the result, the OA is allowed and the impugned letters dated 03.05.2007 and 19.02.2009 (Annexures A-3 and A-4) are set aside. The respondents are directed to calculate the arrears and make the payment of the disability pension @ 50% w.e.f. 25.06.2014 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.

14. No order as to costs.

(Munish Sibal)
Member (A)
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(Mohammad Tahir)
Member (J)

Approved for reporting or not. Yes/No