

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

-.-

OA 2038 of 2013

Tuesday, the 30th day of Oct, 2018

CORAM:

**HON'BLE MR JUSTICE MOHAMMAD TAHIR, MEMBER (J)
HON'BLE VICE ADMIRAL AG THAPLIYAL, MEMBER (A)**

Dalbir Singh

.....

Applicant

(By Mr Surinder Sheoran, Advocate)

Versus

Union of India and others

.....

Respondents

(By Mr KK Bheniwala Sr PC)

-.-

ORDER

The applicant joined the Army service on 16.10.1986 and was discharged on 30.11.2009 after completion of more than 23 years of service with disability "BILATERAL MIXED HEARING LOSS H 90.8". The Release Medical Board (In short RMB) held at the time of his release assessed the disability at 20% for life but net assessment qualifying for disability pension Nil for life. However, it opined the disability as neither attributable to nor aggravated by military service being constitutional disease not related by service. The claim of the applicant for disability pension was rejected by the competent authority on the ground that the disability was neither attributable to nor aggravated by military service vide letters dated 28.04.2011 and 10.07.2012 (Annexures A-2 and A-3).

Being aggrieved, this application has been filed for the grant of disability element of pension with the benefit of rounding off to 50% from 20%.

On notice, the respondents have filed their written statement and have supported the RMB proceedings on the ground that the disease is neither

attributable to nor aggravated by military service and it was due to constitutional disorder. The applicant was not entitled for disability pension in terms of Regulation 179 of Pension Regulations for the Army 1961, (Part-1) as the primary conditions for grant of disability pension is that an individual retired/discharge on completion of tenure of service limits or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disablement is 20 percent or more, and service element if the degree of disability is less than 20 percent.

Heard the learned counsel for the parties and perused the record.

The learned counsel for the applicant has argued that the medical board has not assigned any reason as to why the disease is neither attributable to nor aggravated by military service and as per Rules 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards 1982, the applicant is entitled for presumption and benefit of presumption . The learned counsel for the applicant placed reliance upon the judgment of the Apex Court in the case of **Dharamvir Singh Vs Union of India and others passed in Civil Appeal No. 4949 of 2013 (arising out of SLP(C) No. 6940 of 2010), decided on 21.02.2012.**

The disability pension to the applicant has been denied as in the opinion of the Medical Board carried out at the time of discharge of the applicant, the disease was not attributable to or aggravated due to service. We find that the Medical Board has not assigned any reason as to why the disease is neither attributable to nor aggravated by military service. In this

factual situation, as found in the case of **Dharamvir Singh (Supra)**, as per Rules 5 and 9 of Entitlement Rules for Casualty Pensionary Awards, 1982, the applicant is entitled for presumption and benefit of presumption in his favour. The relevant paragraphs 32 and 33 from the judgment in Dharamvir Singh's case are reproduced hereunder:-

“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.”

The learned counsel for the respondents could not place any material before us to show its non applicability to the facts and circumstances of the case. We are of the view that the aforesaid contention of the applicant's counsel in view of the **Dharamvir Singh's case (Supra)** is well founded.

In view of the above, the application is allowed and the applicant is entitled to disability element of pension from the next date of his discharge i.e. from 01.12.2009 with the benefit of rounding off to 50% against 20% disability as per judgment of the Hon'ble Supreme Court rendered in **Civil**

**Appeal No. 418 of 2012 titled Union of India and others Vs Ram Avtar
decided on 10.12.2014.**

The respondents are directed to make necessary calculations and make payment to the applicant within a period of three months from the date of receipt of certified copy of this order by the learned counsel for the respondents/OIC Legal Cell failing which the amount shall carry interest at the rate of 8% per annum from the date of this order.

No order as to costs.

(AG Thapliyal)
Member (A)
'pl'

(Mohammad Tahir)
Member (J)

Approved for reporting or not. Yes/No