

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

OA 2094 of 2016

Wednesday, the 10th day of Oct, 2018

CORAM:

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

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Applicant

(By Mr Surajmal Kundu, Advocate)

Versus

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Respondents

(By Mr KK Bheniwala Sr PC)

ORDER

This OA has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for quashing the offending part of impugned IMB dated 03.12.1971 (Annexure A-2) vide which the disability of the applicant has been declared as neither attributable to nor aggravated by military service and assessed the disability @ 15-19% for two years and letter dated 28.04.1972 (Annexure A-3).

2. The applicant was enrolled in the Army on 21.02.1962 and was invalided out from service on 21.12.1971 in low medical category “EEE” for the disability “CORNEAL OPACITY LEFT EYE (371)”. His disability was assessed 15-19% for two years and considered as neither attributable to nor aggravated by military service as not connected with military service being idiopathic in nature. Disability pension claim of the applicant was processed by CDA (P) Allahabad which was rejected on the ground that the disability is neither attributable to nor aggravated by military service.

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 idiopathic in nature and not connected with service and, therefore, is conceded not attributable to 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 decision of the Hon'ble Supreme Court in **Civil appeal No. 4949/2013 Dharamvir Singh vs. Union of India** decided on 02.07.2013.

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 letter.

5. On issuance of notice, the respondents filed their written statement wherein it has been stated that the primary condition for grant of disability pension prescribed in Rule 173 of Pension Regulations for the Army, 1961 (Part-1) is "the disability should be either attributable to or aggravated by military service". The Hon'ble Supreme Court vide judgment dated 20.08.2009 in **SLP(C) No. 23727 of 2008 titled Union of India Vs Damadaran AV** has ruled that Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. The disability of the applicant was assessed 15-19% for two years and considered as neither attributable to nor aggravated by military service and not connected with military service being idiopathic in nature. Therefore the applicant is not entitled for any disability pension.

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 on 01.11.1969 in Assam i.e. after about more than 07 years in 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.”

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.”

9. 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 entitled to disability pension consisting of service element and disability element taking the same to be 20% for two years i.e. from 22.12.1971 to 21.12.1973. The applicant is not entitled for rounding off benefit as he was invalided out from service w.e.f. 21.12.1971.

10. In the result, the OA is allowed and the impugned letter dated 28.04.1972 (Annexure A-3) is set aside. The respondents are directed to calculate the arrears and make the payment of the disability pension accordingly within a period of three months from the date of receipt of certified copy of this order by the respondents/OIC Legal Cell failing which it shall carry an interest @ 8% per annum from the date of this order.

11. Since the disability of the applicant was only for two years, therefore the Re-Survey Medical Board (RSMB) of the applicant shall be held within three months from the date of this order and the applicant shall make himself available. In case he is found disabled in RSMB in that case the arrears, if any, shall be restricted to three years only.

12. No order as to costs.

(AG Thapliyal)
Member (A)
'pl'

(Mohammad Tahir)
Member (J)

Approved for reporting or not. Yes/No