FORM NO.4
(SEE RULE 11 (1))
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. T.A No. 140/2010

APPLICANT (S)	Betala Shadaksha Ram
RESPONDENT (S)	Union of India & 2 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mrs. Sonali Das	Mr. Dipak Kumar Mukherjee

	ORDERS OF THE TRIBUNAL
	Order Serial Number: 12 Dated : 10.12.2013
	Mrs. Sonali Das, learned counsel appears for the applicant. Mr. Dipak Kumar Mukherjee, learned counsel appears for the respondents. The transferred application is taken up for hearing. 2. This is a case where the applicant after having put in 203 days of service in the Training Centre as a Recruit was invalidated out of service for the disability of 'Generalised Convulsion (Grandmal Seizure) 345' through a Medical Board that was held on 12.04.1986 at Military Hospital (MH), Golconda, Hyderabad. The applicant did not receive any disability pension although he was invalidated out of service on medical ground. Being aggrieved by non-receipt of disability pension, the applicant approached the Hon'ble High Court of Orissa at Cuttack and filed a writ petition No. WP(C) 14238/2008 which was later transferred to this Tribunal and renumbered as TA No. 140/2010. 3. The facts of the case in brief are that the applicant was enrolled in the Indian Army in the Regiment of Artillery on 30.10.1985 and was discharged on medical ground on 21.05.1986 under Item No. IV of the

table annexed to rule 13 of Army Rule, 1954 on account of disability of "Generalized Convulsion (Grandmal Seizure) 345". Thus, he had an effective service of only for 6 months and 24 days as a Recruit in the Training Centre. The grievance of the applicant is that since he was invalidated out of service, he should have been paid disability pension which was wrongly denied to him. His contention is that when he was enrolled in the Army he was found fully fit in the preliminary medical examination and such disability has only occurred during service period due to stress and strain of service. Therefore, such disability should be presumed to be either attributable to or aggravated by the military service. In such circumstances, the respondent authorities could not deny him disability pension to which he is entitled as per rules.

4. The learned counsel for the applicant has brought to our notice the provisions of Entitlement Rules for Casualty Pensionary Awards, 1982, wherein it has been clearly stated in Rule 9 and 12 that onus of proof lies on the respondents and such disability pension should be granted more liberally. Her contention is that admittedly, the applicant was invalidated out of service within a very short period of his joining the Army, it can be safely presumed that such disability has occurred due to conditions of service. Therefore, he cannot be denied disability pension, especially when at the time entry into service, no note was recorded in his case that such disability existed from a prior date. She further draws our attention to the recent Apex Court decisions in Civil Appeal No. 4949 of 2013 (**Dharamvir Singh vs Union of India**) and Civil Appeal No. 5922 of 2012 (**Veer Pal Singh vs Secretary, Ministry of Defence**) in support of her contentions.

5. The respondents filed affidavit in opposition before the Hon'ble Orissa High Court contesting the claim of the applicant. Ld. counsel for the respondents has reiterated the stand taken in para 2 of the A/O to the effect that prior to his discharge from service, the applicant was brought before the Invaliding Medical Board on

12.04.1986 held at MH, Golconda. This Board was of the view that the invalidment of the applicant was neither attributable to nor aggravated by the military service being a constitutional disability existing before enrolment and not connected with service. The said IMB also assessed the degree of disablement as 11-14% (less than 20%) for two years. He has further submitted that soon after his enrolment on 30.10.1985, within three months, the applicant was admitted in MH, Golconda for the first time in 06.02.1986 with a history of three episodes of 'fits' in the preceding six months, of which two were immediately after joining service and the third before joining the service. All these aspects have been clearly discussed in the opinion of the specialist in the IMB proceedings which have been perused by us. The Medical Board has opined that there was a history of 'fits' of the applicant. Therefore it can be construed as a pre-existing disease prior to enrolment. Considering all these aspects, the ld. counsel for the respondents submits that this is a case where the opinion of the Medical Board should be held final and no interference to it is called for. Mr. Mukherjee further draws our attention to a judgement of the Hon'ble Delhi High Court dated 11.05.2006 passed in WP(C) 3892/1993 (**Shakuntla Devi vs UOI & Ors**.) (annexure R-1 to the A/O). In this case the Medical Board had held that the applicant therein was not entitled to disability pension since it was neither attributable to nor aggravated by the military service and on that account no disability pension was granted. That besides, there are plethora of judgements which support the case of the respondents, which Mr. Mukherjee has cited primarily to emphasise that the opinion of the Medical Board should not be replaced by any other forum except by another Medical Board.

6. Mr. Mukherjee has further submitted that there was a petition by the applicant on 02.03.1987 by way of an appeal against non-grant of disability pension. Such appeal was rejected by the Ministry of Defence vide their letter dated 18.09.1987 (Annexure R-5 to the A/O).

The same was communicated to the Zila Sainik Board, Ganjam, Berhampur on 08.08.1996 by Artillery Records.

7. Based on above facts and circumstances, Mr. Mukherjee prays that the application should be dismissed being devoid of any merit.

8. We have carefully considered the submissions of both sides. We have also gone through the medical board proceedings in original that have been produced before us by the respondents, which have also been inspected by the ld. adv. for the applicant.

9. We are of the view that the Medical Board has gone into all those aspects that are required as per the Entitlement Rules and has finally come to the conclusion that the disease with which the applicant was suffering was indeed neither attributable to nor aggravated by military service. Moreover, the opinion of the specialist doctor to the effect that the applicant was first admitted in the Hospital within two months of his joining Army wherein he gave a history of three such cases of 'fits' which included one before his enrolment. All these aspects led the Medical Board to come to the conclusion that it is a pre-existing disease before enrolment but could not be detected at the time of his enrolment. Under such circumstances, we stand by all the opinions of the Medical Board and we are of the view that there is no reason to interfere with the opinion of the Medical Board. That apart, the provisions of Regulation 173 of the Pension Regulation for the Army which has been referred to by Mr. Mukherjee is also not in favour of the applicant. It will be relevant to quote Reg. 173 as under: -

> " ***173 – Pension*** – "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. .."**

10. It is evident from the ibid Regulation that once an army personnel is invalidated out of service, he must satisfy two conditions to

make himself entitled to disability pension. The first condition is that the disablement must be either attributable to or aggravated by the military service and the second one is that the disability is required to be 20% or more. In the instant case, we find that the applicant does not fulfill any of the above two conditions because his disability was held to be not attributable to nor aggravated by service being a constitutional disorder, and, the percentage of disablement was below 20. Under such circumstances, the provisions of the Pension Regulation 173 do not allow the applicant to be entitled to any disability pension.

11. Ld. adv. for the applicant has referred to the recent decision of the Hon'ble Apex Court in **Dharamvir Singh vs Union of India**, AIR 2013 SC 2840 and **Veer Pal Singh vs Secretary, Ministry of Defence,** AIR 2013 SC 2827 in support of the claim of the applicant. We have gone through these decisions carefully. In Veer Pal Singh's case (supra), it is held by the Hon'ble Supreme Court that the opinion of the medical board "deserves respect but not worship" In appropriate cases, judicial review of medical opinion is permissible.

12. The Hon'ble Apex Court in **Dharm Vir's case** (supra) considered the matter regarding rules and regulations governing grant of disability pension and formulated the following two issues:-

i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?

ii) Whether the appellant is entitled for disability pension?

13. The Hon'ble Supreme Court has graphically discussed the scope of rules 5.6, 7(a), (b) and (c), 8, 9 and 14(a), (b), (c) and (d) of Entitlement Rules, 1982 as also regulation 173 of Pension Regulations including the amendments made thereto and in para 28 of the judgement it is held as under:-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that --

(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.

(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©].

(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. [rule 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. [Rule 14(b)]

(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.

14. After explaining Rule 423 of Guide to Medical Officers (Military Pensions) 2002, which deals with attributability aspect, it has been observed by the Apex Court in para 25 of the ibid judgement :-

"25. Therefore, as per rule 423 following procedures 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 op have 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. "

15. As already discussed above, it appears that the IMB and the specialist doctor have elaborately discussed the disability of the applicant and it was very rightly held that the said disease was pre-existing which could not be detected at the time of enrolment. The opinion of the IMB is very reasoned one and we are not inclined to interfere with the same, rather such opinion is to be respected. Under the above circumstances, we are unable to grant any relief to the applicant.

16. Accordingly, the transferred application stands dismissed being devoid of any merit. There will be no order as to costs.

17. The original records produced by the respondents be returned to them under proper receipt.

18. A plain copy of the order, duly countersigned by the Tribunal Officer, be given to the parties upon observance of usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)