

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

OA No 121/2016

CORAM : **HON'BLE MR JUSTICE MOHAMMAD TAHIR, MEMBER (J)**  
**HON'BLE VICE ADMIRAL P MURUGESAN, MEMBER (A)**

APPLICANT : Ashok Kumar

RESPONDENT (S) : Union of India & Others

Legal Practitioner of applicant(s) : Legal Practitioner for Respondent

Mr Aniruddha Dutta, Advocate : Mr Partha Ghosh, Advocate for  
Mr Tapas Kumar Chatterjee,  
Advocate

	<b><u>ORDERS OF THE TRIBUNAL</u></b>
	Order Serial Number : Dated : 07.02.2020
	<p>This matter was listed for 12.03.2020 and has been preponed for today for hearing vide administrative order dated 06.02.2020.</p> <p>This is an application under Section 14 of the Armed Forces Tribunal Act, 2007, praying for the grant of disability pension. The brief facts necessary for adjudication of this Original Application are as follows.</p> <p>The Applicant entered military service in a fit medical condition on 30.10.1979. During the course of his service, he incurred the disabilities of (i) <b>PRIMARY HYPERTENSION (30%)</b> (ii) <b>Type II DM (19%)</b> and (iii) <b>CAD 3VD (CABG) (30%)</b> and was finally <b>released</b> from service on <b>30.04.2011</b>. At the time of release, his disability was assessed at <b>60%</b> (composite) by Medical Board <b>for life</b>.</p> <p>The Applicant's claim for disability pension was however rejected by the Respondents on the ground of the said disability <b>being "Neither Attributable to, Nor Aggravated by Military Service"</b>, thereby leading to</p>

the filing of the instant Application for the requisite relief. The Applicant submits that his prayer is now covered by a 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.

On the other hand, the Respondents have taken a stand that the disability has been declared "Neither Attributable to, Nor Aggravated by Military Service" by the medical board and hence the Applicant is not entitled to disability pension since the opinion of the medical board, being an expert body, must be respected.

We have considered the rival stands/submissions of the learned counsel for both the parties in the light of the judgment of the Hon'ble Supreme Court rendered in ***Dharamvir Singh Vs Union of India (Supra)*** and the relevant rules. The relevant Paras 30, 32 and 33 of the aforesaid judgment are here as under:-

*"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 undisputedly proved that at the time the applicant entered into military service, this type of disease/disability did not exist. The disability accrued to him during the course of military service. So by virtue of the principle laid down in **Dharamvir Singh's case (Supra)**, the said disability can be attributed/aggravated by military service.



Considering the law laid down by the Hon'ble Supreme Court and also the attending circumstances, the rejection of the claim of the Applicant is set aside and the Applicant is thus held entitled to disability pension @ 75% as against 60% for life after being rounded off as per judgment of the *Hon'ble Supreme Court in Civil Appeal 418/2012 Union of India Vs Ram Avtar decided on 10-12-2014* and the arrears are directed to be released by the Respondents within a period of three months from the receipt of a certified copy of this order by the counsel for the Respondents/OIC Legal Cell, failing which the arrears shall carry an 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 in that case he shall be entitled only to the disability element of disability pension only.

Since the applicant has come to the court after about five years of his release from the Army, the arrears so accrued are restricted to three years prior to the date of filing of this OA, that is, 31.08.2016.

No order as to costs.

(P MURUGESAN)  
MEMBER(A)  
SKS/07.02.2020

(MOHAMMAD TAHIR)  
MEMBER (J)