

FORM NO. 21
(SEE RULE 102(1))
ARMED FORCES TRIBUNAL ,KOLKATA BENCH

OA No. 72/2020.

THE 14TH DAY OF MARCH, 2024.

No.15390263H Ex Hav Gopal Chandra Jana.

... Applicant.

-Vs-

Union of India and others. Respondents.

Advocates present:

For the applicant,

Mr SK Choudhury, through videoconference.

For the respondents,

Mr Ajay Chaubey, Sr.PC.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

(2) Applicant was enrolled in the Signal Corps of the Indian Army on 26.06.1995. He served in different places including the high altitude area Nimu and the field areas Udhampur, and Sukna. The charter of duties of the applicant assigned was mainly as telecommunication technician in a place. Therefore, with the nature of duty he was

supposed to sit before computers for 8-10 hours a day. It is in the year 2014 when posted in 33-Corps Engineering Signal Regiment at Sukna(semi field) that he was detected to be suffering from "Retinal Vasculities(Rt.) Eye Sectoral Laser Photocoagulation(ICD Code H35.069)". He was admitted for treatment to 158-Base Hospital and Command Hospital Kolkata from 17.09.2014 to 17.05.2015.

(3) In the initial medical categorisation the medical board has held the disability as "Retinal Vasculities(Rt.) Eye Sectoral Laser Photocoagulation Done" and declared the same aggravated by military service. He was placed in medical category E3(T-24). The proceedings of the medical board are Annexure A/1.

(4) As per the first re-categorisation medical board proceedings(Annexure A/2) the disability incurred upon by the applicant was held as attributable to military service and its extent 15-19%, to be decided later on.

(5) The second re-categorisation medical board convened on 18.05.2017 has also held the disability the applicant incurred upon as attributable to; however, 15-19%. The proceedings are Annexure A/3.

(6) The release medical board convened on 17.04.2019 has held the disability incurred upon by the applicant composite 20%; however, neither attributable to nor aggravated by military service. The proceedings are Annexure A/4.

- (7) Applicant was ultimately discharged from service on 30.06.2019 after he having rendered 24 years of service with 20% disability namely "Retinal Vasculities(Rt.) Eye Sectoral Laser Photocoagulation(ICD Code H35.069)". The discharge book is Annexure A/5.
- (8) Although the applicant was granted service pension, yet disability pension was not on the sole ground that the disability he incurred upon is neither attributable to nor aggravated by military service as is apparent from Annexure A/6.
- (9) Aggrieved thereby the applicant filed an appeal on 13.08.2019(Annexure A/7) before the first appellate authority. However, the same was rejected and he was informed vide impugned order dated 18.12.2019. He filed second appeal(Annexure A/8) on 02.03.2020 and the Signal Records forwarded the same to the appellate authority. When no response thereto was forthcoming, even after expiry of the statutory period of 6 months also, this application has been filed on the grounds inter alia that when the first and second re-categorisation medical boards have held the disability attributable to military service the findings given by the release medical board to the contrary are not only erroneous but unconstitutional and arbitrary also. It is in this backdrop that the impugned order dated 18.12.2019 has been sought to be quashed and set aside being violative of Articles 14 and 21 of the Constitution of India and also the basic canon of service jurisprudence as well as natural justice. A direction has been sought to be passed against the respondents to grant the disability element of disability pension @ 20% and by rounding it off to 50% for life with effect from 01.07.2019 together with interest up to date and costs.

(10) The respondents when put to notice have filed reply, admitting therein the facts of the case as disclosed from the perusal of the OA and discussed herein above. The only reason given to deny the claim of the applicant for the grant of disability element is that the disability is neither attributable to nor aggravated by military service. There has however nothing come on record to controvert the averment that when the first and second medical boards have held the disability attributable to military service the release medical board could have recorded the findings to the contrary for the same.

(11) Rejoinder has also been filed denying the contentions to the contrary made in the reply and reiterated the entire case as set out in the Original Application.

(12) On the completion of records we have heard learned counsel on both sides and also gone through the records.

(13) The present is a case where the applicant has rendered 24 years of service in the Army because he was enrolled on 26.06.1995 and discharged from service on 30.06.2019. He has admittedly suffered the disability "Retinal Vasculities(Rt.) Eye Sectoral Laser Photocoagulation(ICD Code H35.069)" which, as per the proceedings (Annexure A/1 and A/2) of the first and second medical re-categorisation boards, is attributable to military service. Rightly so, because there is no denial to the averments in the OA that owing to the nature of duty the applicant performed he had to handle

the computers for 8-10 hours a day. Toxic radiations emitted from computers and its in-built accessories to the eyes of the applicant might have resulted in the disability. Its percentage, as per the opinion of the re-categorisation medical boards, was 15-19%. However, the same applicant when brought before the release medical board the RMB has held the disability 20% for life. The opinion given by the medical board in its proceedings(Annexure A/3) that the disability incurred upon by the applicant is neither attributable to nor aggravated by military service is not only wrong but contradictory also as the opinion of the re-categorisation medical board said the same is not attributable to military service. Otherwise also, the applicant was not suffering from any such ailment/disability when enrolled in the Army; rather, he was found to be in a fit state of health by the medical board examined him medically at that time.

(14) The law laid down by the Hon'ble Supreme Court in *Dharamvir Singh Vs Union of India*(2013) 7 SCC 316 is fully attracted in the given facts and circumstances of the present case. The operative part of the judgment reads as follows:

“29.1. Disability pension to be granted to an individual who is invalided 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 to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II(Regulation 173).

29.2. A member is to be presume 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 read with Rule 14(b)].

29.3 The 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).

29.4 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(c)].

29.5 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 a individual's discharge or death will be deemed to have arisen in service[Rule 14(b)].

29.6 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)]; and

29.7 It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers(Military Pensions).2002 "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above(para 27).

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"Para 31 ... 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 33 ...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 34 ... 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 casual connection with the service conditions ..."

(15) The present is a case where the applicant has not suffered from the disability overnight and rather at a stage when he had rendered 19 years of service. Therefore, it lies ill in the mouth of the respondents to say that the applicant is not entitled to the disability element.

(16) Mr Ajay Chaubey, learned Sr.PC, has made an effort to substantiate the defence laid by the respondents in reply to the OA, while submitting that the applicant having been discharged from service on completion of the terms of his engagement is not entitled to the grant of disability element; however, unsuccessfully: for the reason that even on discharge on completion of the term of engagement also the applicant is entitled to the grant of disability element of disability pension in terms of Regulation 179 of the Pension Regulations(Part I) for the Army which provides that in a case where 20% disability or above is held and attributable to or aggravated by military service by the release medical board at the time of discharge from service, besides service pension he is entitled to disability element also.

(17) Mr Chaubey has also placed reliance on the judgment of the Hon'ble Supreme Court in Union of India and others vs. Ex. Sep. R. Munusamy 2022 SCC Online SC 892. However, with due regard and all humility in our comment the law laid down in this judgment is not applicable in the given facts and circumstances of the present case because that was a case where the applicant was discharged from service by way of penalty on account of 7 red entries in his service record.

(18) In the present case the entire service record of the applicant is unblemished and not only this but also the re-categorisation medical board has twice held the disability attributable to and aggravated by military service. Therefore, we are not satisfied with the arguments addressed by learned Sr.PC. He, to our mind, has made such submissions merely for rejection.

(19) In view of what has been said hereinabove this application succeeds and the same is accordingly allowed. Consequently the impugned order dated 18.12.2019 is quashed and set aside. As a result thereof the applicant is entitled to the disability element of disability pension @ 20% and by rounding it off to 50% for life as per the policy and also the ratio of the judgment of the Hon'ble Supreme Court in Civil Appeal No.418/2012 titled Union of India Vs Ram Avtar decided on 10.12.2014 from the day next to his discharge from service i.e. 01.07.2019. The due and admissible arrears up to date be calculated and released to him within a period of 3 months from the date of receipt of certified copy of this order by learned Central Government Counsel /OIC Legal Cell failing which together with interest @ 8% per annum from the date of this order till the entire amount is realised.

(20) The Original Application is accordingly disposed of so also the pending Misc. Application(s) if any. No order so as to costs.

LT GEN SHASHANK SHEKHAR MISHRA
HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY
HON'BLE MEMBER(J)

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