ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR

…

OA No.1012 of 2014

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Col (Retd) Harbans Singh Katoch ...Petitioner

Versus

Union of India & others …Respondent(s)

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For the petitioner : Mr.Surinder Sheoran, Advocate
For the Respondent(s) : Mrs.Geeta Singhwal, Sr.PC

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CORAM:JUSTICE SURINDER SINGH THAKUR, JUDICIAL MEMBER
LT GEN DS SIDHU (RETD), ADMINISTRATIVE MEMBER

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ORDER
30.06.2015

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Brief facts of this case are that the petitioner while serving in the Army got Permanent Commission on 21.12.1969 and superannuated w.e.f. 31.05.1997 in medical category lower than **SHAPE-1** due to the disease **"PRIMARY HYPERTENSION".** A Release Medical Board (RMB) was held on the petitioner on 20.05.1997 which assessed the disability as 30% for two years, held as aggravated by the Military Service (Annexure A-1). The respondents rejected the claim of the petitioner for disability pension on the following ground, mentioned in Annexure A-2, dated 14.07.1998:-

> *"1. Having examined your case in case in accordance with the existing medical and administrative provisions, it has been decided that you are not entitled to disability pension since the ID(s) as recorded in release medical board held at the time of your release from service have been found to be neither attributable to nor aggravated by military service.*
>
> *2. xxx xxx xxx"*

2. Feeling aggrieved by the rejection order, the petitioner filed an appeal on 24.10.1998 which was also rejected by the respondents vide Annexure A-3, dated 25.01.2002 with the following observations:-

> *"On perusal of your service/medical documents, the committee has found that your invalidating disability is a constitutional disorder which is neither attributable to nor aggravated by military service. Therefore, you are not entitled to disability pension as per Regulation 173 of Pension Regulations for Army Part-1, 1961. Accordingly, ACFA has not accepted your appeal."*

The second appeal filed by the petitioner was also rejected vide Annexure A-4 dated 10.06.2008 stating that onset of the Invaliding Disease (ID) **"PRIMARY HYPERTENSION 410"** developed to the petitioner when he was posted to a peace station and *"There was no close time association of the onset with Fd/Ops/CI Ops/HAA tenure*".

3. The petitioner has referred to various instructions of Govt. of India, Ministry of Defence on the subject of disability pension and rounding-off i.e. dated 03.02.2000, 31.01.2001 and 05.05.2009 and has stated that he completed 33 years of service in the Army and was discharged from service on having been downgraded to Low Medical Category at the time of discharge, therefore, entitled to disability pension as well as the benefit of rounding off.

4. On the above pleadings, the petitioner has prayed for the following relief(s) viz:-

> (i) To quash the impugned letters dated 14.07.1998, 25.01.2002 and 10.06.2008 (Annexures A-2 to A-4), vide which the respondents rejected his disability pension claim for the 30% disability element, w.e.f. 01.06.1997;

(ii) To direct the respondents to release disability pension to him, consisting of disability element @ 50%, against 30% disability, in the rank of Lieutenant Colonel for life with interest; and

(iii) To issue any other appropriate order or direction which the Tribunal may deem fit and proper in the circumstances of the case.

5. On notice, respondents 1 to 4 have filed a written statement jointly. The facts given by the petitioner are largely not disputed. It is, however, contended that at the time of retirement, the petitioner was placed in Low Medical Category in **S1H1A1P2(P) E1** as per AFMSF 16 dated 31.05.1997 for the disability ID **"PRIMARY HYPERTENSION (401)"** which was assessed as aggravated due to service conditions with composite disablement @ 30% for two years. However, the competent authority considered the disability as neither attributable to, nor aggravated by the military service (NANA) vide letter dated 14.07.1998 and, accordingly, rejected the claim of the petitioner for disability pension. Moreover, the petitioner was discharged on superannuation, therefore, was not entitled to disability pension. The first and the second appeals filed by the petitioner were also rejected. Since the petitioner was found not entitled to disability pension, therefore, he is also not entitled to be benefit of rounding off.

6. We have heard learned counsel for the parties and have examined the pleadings and the documents on record.

7. Admittedly, the Release Medical Board assessed the disability of the petitioner i.e. **"PRIMARY HYPERTENSION (401) "** vide Annexure A-1 dated 20.05.1997 as 30% for two years which was held as aggravated by the

Military Service, but, the competent authority considered it NANA vide letter dated 14.07.1998 and repudiated the claim of the petitioner for disability pension. However, on going through the RMB proceedings we find that no reasons were given by the Medical Board for basing its opinion with regard to attributability and aggravation of the disability of the petitioner. With regard to the specific condition and period in service which aggravated the disability, it was opined that the disability was *"Due to physical and mental stress and strain of Mil service during Jan 1997"*. The appeals preferred by the petitioner were rejected on the ground that the invaliding disease was constitutional disorder, neither attributable to, nor aggravated by the Military service, therefore, the case of the petitioner was not covered under Regulation 173 of the Pension Regulations for the Army, Part-I, 1961. On these grounds the respondents have contended that not-grant of disability pension to the petitioner is justified.

8. On consideration of the above facts we find that the pleas taken by the respondents are baseless and not acceptable. Undoubtedly, disability pension can be granted to a member of the Armed Forces under Rule 173 of the Pension Regulations for the Army, Part-I, 1961 in case the disability suffered is 20% or above and is held as attributable to and aggravated by the military service. Obviously, the twin requirements stood met in the case of the petitioner and disability pension deserved to be granted to him @ 30% for two years. Non-grant of such a benefit is, therefore, held as illegal and arbitrary, therefore, unsustainable in the eyes of law.

9. It is pertinent to observe that under law the medical assessment recorded by a duly constituted Medical Board is required to be assigned due weight, value and credence and cannot be re-assessed, altered or modified at the level of administrative authorities while considering the cases for grant to disability pension. The claim of the petitioner for disability pension, therefore, could not be rejected by the respondents by treating the disability and neither attributable to, nor aggravated by the military service. Reliance is placed on the decision of the Apex Court in **Civil Appeal No.264 of 1991**, decided on **14.01.1993**, titled **Ex Sapper Mohinder Singh vs. Union of India**.

10. The medical documents, placed on record, though nowhere mention the disability suffered by the petitioner as a constitutional disorder, but, on the plea of the respondents in this regard, we may observe that similar controversy was involved in the case of **Onkar Singh Bawa v. Union of India** decided by the Honble Punjab & Haryana High Court and reported in **2013(1) PLR 830**. The petitioner therein had joined duties at a young age when he was hardly 19 years old. He had rendered 31 years of service when in 1984 it was detected that he was suffering from IHD, which is a heart disease. To the question as to how such a disease could be constitutional disease, the High Court observed that Para 1 of the Pension Regulations of the Indian Air Force, 1961 provides a complete answer. With reference to sub Rule (b) of Rule 37 of the Regulations, it was further observed that the question as to whether a disability is attributable to or aggravated by Air Force Service is mentioned in Appendix-II, which contains classification of the diseases and, inter alia, provides for certain diseases which may be affected by stress and strain and IHD is specifically mentioned under this

head. In the Para 10 of the judgment, the Hon'ble High Court has observed as under:-

> *"10. It is clear from the above that* ***insofar as IHD is concerned, the respondents have themselves treated it to be attributable to stress and strain and this stress and strain is due to the duties which are discharged by the concerned officers. Therefore, the disease in question would be directly attributable to the service.*** *The issue on this is no more res integra and has been determined by this Court in a number of cases. It would be suffice to refer to one such Division Bench judgment in the case of Ex.Sepoy Bhola Ram v. Union of India 2008 (4) SLR 377, wherein this very disease is clearly shown to be related to stress and strain referring to some provisions which we have taken note of above." (emphasis supplied)*

Consequently, the OA filed by the petitioner in the AFT was allowed and the arrears were restricted to three years preceding the date of filing that OA which were directed to be calculated in accordance with the judgment of the Supreme Court in the case of **K.J.S.Butter v. Union of India and another 2011 (2) SLR 758**, to be paid to the petitioner within a period of two months from the date of receipt of certified copy of that order.

11. This Tribunal, keeping in view certain decisions of the Hon'ble Punjab & Haryana High Court, rendered a judgment on 19.09.2014 in the case **Krishan Singh vs. Union of India, OA No.3952 of 2013.** Brief facts and findings recorded therein are reproduced below:-

> "A bare perusal of AFMS-16 would show that the petitioner has been released in low medical category for "Primary Hypertension" and the last Medical Board was held on 21.11.2006. Date of origin of the disease is mentioned as 01.09.2005 when the petitioner was serving at Pathankot, 16 Mech. Inf. The Medical Board opined that the disease being constitutional, is neither attributable to nor aggravated by military service. The contention of the learned counsel for the petitioner is that the Medical Board has not given any reason for holding that the disease is neither attributable to nor aggravated by military service. Further, the petitioner has served the Army around 30 years and the disease was developed in service and as such in the absence of any reason to the contrary, it should be presumed that the disease is attributable to and aggravated by military service. The Medical Board proceedings being bereft of any reason is

liable to be ignored. The learned counsel for the respondents on the other hand submits that the opinion of the Medical Board being opinion of experts deserves credence and should be respected and accepted. He submits that said view has been taken by the Apex Court in number of cases i.e. in **S. Balachandran Nair, (2005) 13 S.C.C. 128 and A Damodaran, (2009) 9 S.C.C. 140.**

A Division Bench of the Punjab and Haryana High Court recently in the case of **Ex Naik Umed Singh Vs Union of India** C.W.P. No. 7277 of 2013 decided on 14.05.2014, has held as follows:-

" ……..Therefore, in view of the judgment in Dharamvir Singh's case (supra), we have no hesitation to hold that if no note is given of any disease at the time of acceptance of an individual into service, the disease would be deemed to have arisen in service. The Invalidation Medical Board or Review Medical Board has to record a categorical opinion that the disease, the reason of invaliding out of service could not have been detected on medical examination at the time of enrolment. In the absence of any such finding of the Medical Board, the disease would be deemed to have arisen in service".

The High Court has held that if no disease is recorded at the time of entry of a person in the Army and during the course of service, an individual suffers a disease, it should be presumed that the disease has been arisen during service which has been aggravated by service or attributable to service if the Medical Board does not record any reason. The burden to rebut the said presumption is not on the individual but on the Army.

We find that the High Court in case **Ex. Naik. Umed Singh Vs Union of India and others** (supra) being writ petition No. 7277 of 2013 decided on 14.5.2014 has taken note of the earlier decisions of the Apex Court. The said judgment has been referred in the judgment dated 26.5.2014 passed in CWP No. 9369 of 2013 – **Swaran Singh Vs Union of India and others**. Relevant portion is reproduced below:-

"The issue as to whether disability pension can be declined even in the absence of the opinion of the Medical Board that such disease could not be detected at the time of entry into the service has been decided by this Court in C.W.P. No. 7277 of 2013 titled as Ex. Naik Umed Singh v. Union of India and others, decided on 14.5.2014. It has been held that in the absence of the reasons recorded by the Invalidating or Review Medical Board that the disease could not be detected at the time of entry into Government service, the claim for disability pension could not be declined. The relevant extract from the judgment reads as under :-

"….Therefore, in view of the judgment in Dharamvir Singh's case (supra), we have no hesitation to hold that if no note is given of any disease at the time of acceptance of an individual into service, the disease would be deemed to have arisen in service. The Invalidation Medical Board or Review Medical Board has to record a categorical opinion that the

disease, the reason of invaliding out of service could not have been detected on medical examination at the time of enrolment. In the absence of any such finding of the Medical Board, the disease would be deemed to have arisen in service."

In view of above, we find sufficient force in the aforesaid argument of the learned counsel for the petitioner that the opinion of Medical Board, be a body of experts is liable to be ignored being bereft of any reason and the petitioner is entitled to get the disability pension. The petition is allowed by restricting it to three years preceding the date of filing the petition i.e. 09.04.2014."

12. It is pertinent to mention that the law laid down by the Hon'ble Supreme Court in Dharamvir Singh's case (supra) holds the field and has been followed by the Apex Court in the following subsequent decisions:-

(i) Union of India & Anr. Vs. Rajbir Singh, Civil Appeal No.2904 of 2011, decided alongwith connected appeals on 13.02.2015; and

(ii) Union of India & Ors. Vs. Angad Singh Titaria, Civil Appeal No.11208 of 2011, decided on 24.02.2015.

13. In view of the above law, the opinion of the RMB by which it was held that the disability of the petitioner was neither attributable to nor aggravated by the army service and the plea of the respondents that it was constitutional in nature requires to be ignored. The disability comes under Class B of Annexure III to Appendix II of Entitlement Rules for Casualty Pensionary Awards. In absence of any reasons having been recorded in the Medical Board proceedings to hold the disability of the petitioner i.e. **"PRIMARY HYPERTENSION"** as NANA, a presumption has to be drawn in favour of the petitioner that it was attributable to and aggravated by the Military Service. As also observed by the High Court in Onkar Singh Bawa's case (supra**), PRIMARY**

HYPERTENSION, to our understanding as well is a 'heart disease' and answer to the questions whether it could be a constitutional disease and whether such disability is attributable to or aggravated by the Military Service, lies in the Pension Regulations for the Army itself and the respondents were under an obligation to treat it to be directly attributable to the service. The contention of the respondents that onset of the Invaliding Disease (ID) was when he was posted to a peace station also does not carry any weight in view of the above law. We, therefore, have no hesitation to allow this O.A.

14. The other plea of the respondents is that the petitioner was discharged on superannuation, therefore, was not entitled to disability pension. Such a plea is also untenable as under the rules, the petitioner herein is to be considered as invalided out of service, therefore, entitled for grant of disability pension from the date of retirement.

15. Consequently, this OA is allowed. The impugned rejection orders, Annexures A-2 to A-4 rejecting claim of the petitioner are hereby quashed and set aside with a direction to the respondents to grant disability pension to the petitioner for the 30% disability, rounded off to 50%, for two years from 01.06.1997. Accordingly, the respondents are directed to calculate and disburse the arrears accrued to the petitioner by virtue of the present order within a period of three months from the date of receipt of certified copy of this order by the learned counsel for the respondents, failing which, the arrear amount shall carry interest @ 8% per from the due date, till actual payment thereof.

16. The respondents may hold a Re-survey Medical Board on the petitioner to consider further disability of the petitioner and consider his case for grant disability pension in accordance with its recommendations.

17. The O.A. is allowed in part with the above observations and directions, however, with no order as to costs.

[Justice Surinder Singh Thakur]

[(Lt Gen DS Sidhu (Retd)]

Chandigarh

Dated: 30.06.2015

`bss'

Whether the judgment for reference to be put on internet – Yes/ No