

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI

OA -14/2014

P R E S E N T

HON'BLE MR. JUSTICE B.P.KATAKEY, Member(J)
HON'BLE LT GEN SANJIV LANGER , Member(A)

Shri Kshertrimayum Dhanachandra Singh
Ex Sepoy no 4361771 aged about 40 years
s/o.late Ksh Birhari Singh
resident of Serou Mayai Leikai,
part I PO and PS Sugnu Thoubal
District Manipur.

... **Applicant**

Mr.N.Anix Singh
Mrs. N.Krishna Devi
**Legal practitioner
for Applicant**

1. The Union of India,
through the Secretary Ministry of Defence,
Govt of India, New Delhi.
2. The Chief of the Army Staff, Army Head
Quarters New Delhi.
3. The Commandant 7th Battalion Assam
Regiment.
4. Retd.Col John Zama 7th
Battalion Assam Regiment
Now serving as Director Sainik
Welfare and resettlement Aizawl
5. Major Senior Record Officer/
Officer in charge Records
C/O. 99 APO
6. Hav Birbabu Singh 7th Battalion
Assam Regiment C/O.99 APO
7. Ex Naik L Ibotombi Singh S/O.
(L) L.Bhimo Singh Village
Kamranga PO Kamranga Part I
PS Lakhipur District Cachar Assam
8. Ex Sub Hony Capt Dharam Bahadur
Ramdam Khaprail, Sainik, Puri PO New
Chumta District Darjeelings WB-734225.

... Respondents.

Mr.N.Deka,
CGSC
Ms.N.Das
**Legal practitioner
for Respondent (s)**

Date of Hearing : 12th February,2016
Date of Judgment & Order : 12th Febraury.2016.

JUDGMENT & ORDER

(ORAL)

(B.P.Katakey, J)

The applicant has filed this OA challenging the decision of the Appeal Medical Board dated 25.04.2013 certifying that the he is suffering from 40% disablement because of Schizophrenic Psychosis and consequential discharge from service with a further prayer to direct reinstatement in service apart from the prayer for initiation of a criminal proceedings against the private respondents and also for quashing the discharge slip dated 12.11.1997, contending , inter alia , that though the applicant was not suffering from any disability as certified by the Medical Board as well as by the Appeal Medical Board, he has been discharged from service on the ground of 40% disability, as the private respondents had conspired against him.

2. The applicant was enrolled in the Indian Army as Sepoy in the year 1990. While he was serving in the Army he was served with a discharge order dated 12.11.1997 because of the disability he has suffered. The applicant then approach the Imphal Bench of the Hon'ble Gauhati High Court in WP(C) No. 86/2005 challenging the discharge order dated 12.11.1997. The said proceedings has been transferred to this Tribunal,, which was registered and numbered as TA 5/2011. The TA was disposed of vide Judgment and Order dated 09.02.2012 with the observation that the applicant may file a fresh appeal against the opinion of the Medical Board, within a period of 1 month there from, and directed that in the event of filing of such an appeal, the authority shall objectively consider the same and pass appropriate order within 2 months from the date of receipt of the appeal. The applicant, thereafter, filed the appeal challenging the findings of the Medical Board which has assessed the disability of the applicant to the extent of 30%. The appeal medical Board constituted for the purpose of medical examination of the applicant, upon fresh examination has rendered its opinion on 25.04.2013 certifying the extent of disability, because of Schizophrenic Psychosis of the applicant as 40%. The applicant, therefore, has filed the present application praying for the relief as noticed above.

3. We have heard Mr. Anix Singh, learned counsel appearing for the applicant and Ms.N.Das, learned counsel representing Brig(Retd) N.Deka, CGSC, assisted by Col Anand, OIC AFT Legal Cell.

4. The learned counsel appearing for the applicant submits that since the applicant is not suffering from any ailments, the report of the Medical Board as well as the Appeal Medical Board, whereby and whereunder the applicant has finally been certified to be disabled by 40%, cannot be accepted and hence, the applicant is entitled to be reinstated in service. It has also been submitted that since his enrolment in 1990 till discharge he served in various places including Bhutan without any blemish and because of physical and mental torture by the private respondents since 09.04.1996 till his discharge, he has suffered immensely, for which he was hospitalized and thereafter though on his release from hospital he prayed for allowing him to join service he was not allowed. Referring to the communication dated 28.10.2002 issued by the Record Officer (Annexure R/6 to the reply affidavit filed by the official respondents) it has also been submitted that even the request of the applicant for grant of disability pension has been rejected on the ground that the Schizophrenic Psychosis, from which the applicant was stated to be suffering from, is neither attributable to nor aggravated by military service and constitutional in nature and not related to service. The

learned counsel, therefore, submits that the applicant is entitled to be reinstated in service.

5. The learned counsel for the respondents on the other hand placing reliance on the reports of the Medical Board as well as Appeal Medical Board and also the averments made in the reply affidavit filed by the official respondents has submitted that it is apparent there from that the disability of the applicant though initially found to be 30%, the same was found to be 40% by the Appeal Medical Board and hence, the decision of the respondents in discharging the appellant from service on the ground of disability requires no interference by this Tribunal. It has also been submitted that though the record officer vide order dated 28.10.2002 rejected the claim of the applicant for grant of the disability pension, the said issue having not been raised in the present OA, no direction can be issued for grant of disability pension to the applicant, more so, when Schizophrenic Psychosis, from which the applicant was suffering from, was neither attributable to nor aggravated by military service and the same being constitutional in nature.

6. We have considered the submissions advanced by the learned counsel for the parties and also perused the pleadings of the parties including the annexures appended thereto.

7. Medical Board constituted by the Army authority for medical examination of the applicant initially certified disability of the applicant, because of Schizophrenic Psychosis, as 30%, based on which the order of discharge dated 12.11.1997 was passed. As noticed above, pursuant to the order passed by this Tribunal on 09.02.2012 in TA 05/2011, the appeal medical board was constituted as the applicant had contended that he was not suffering from any ailment. The appeal medical board in its report dated 25.04.2013 has also opined that he is suffering from Schizophrenic Psychosis and his extent of disability is 40%. The reason of the disability cited by the appeal medical board, is quoted below:-

“On the onset of ID in March, 1997 while serving in peace area there is no close time association of the patient with field/CI- OPS/HEE. Hence ID conceded as not attributable nor aggravated to service”

8. Having regard to the opinion of the medical board as well as of appeal medical board and in the absence of anything contrary to the opinion of such medical boards as well as in the absence of any evidence against the private respondents in respect of the allegation leveled against them, we are of the considered opinion that the discharge order of the applicant dated 12.11.1997 cannot be interfered with by this Tribunal as the applicant was discharged from his service because of his medical condition.

9. This leads to the question as to whether the Tribunal can issue a direction to the respondent authority to pay the disability pension, provided the applicant is entitled to the same. The applicant in the application filed has not prayed for disability pension. It, however, appears from the reply affidavit filed by the official respondents that the applicant in fact prayed for disability pension vide petition dtd. 08.10.2002, which has been rejected by the authority on 28.10.2002 (Annexure-R6 to the reply affidavit filed by the official respondent). The ground on which the prayer for grant of disability pension has been rejected has already been quoted above.

10. Though the applicant has not prayed for any disability pension in the present OA, it will not debar this Tribunal from passing an order directing payment of disability pension, provided that the applicant is entitled to and when the applicant's contention that he was not suffering from any ailment has been rejected, for the simple reason that the pension is not a bounty, which is right accrued to an individual for the services rendered by him. Refusal to pass an order relating to disability pension would definitely cause hardship to the applicant, as he has to re-agitate the said issue by filing another OA thereby causing further delay, more so when the entitlement or otherwise of the disability pension can be adjudicated upon in the present proceedings as the respondents in their reply affidavit has

taken the stand that the applicant even is not entitled to disability pension on the grounds stated therein.

11. The issue relating to the payment of disability pension is no longer *res-integra*. The Apex Court in Dharamvir Singh VS. Union of India and, ors reported in (2013) 7 SCC 316, has held as under :

29. A conjoint reading of various provisions, reproduced above, makes it clear that:

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 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 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 having arisen in service, it must also 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 had led to an 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).

12. Based on the aforesaid judicial pronouncement, different benches of this Tribunal, including the Principal Bench, passed a number of orders in similar matters including the order dated 13.01.2015 passed in OA 171/2014 directing payment of disability pension with interest to the applicants therein.

13. The Apex Court in Dharamvir Singh (Supra) has held that 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 service in that regard. It has also been held that the onus of proof is on the Army authority to prove the condition for disentanglement of disability pension by a member. It has further been

held that the in absence of any physical and mental condition at the time of entering in the service, a presumption ought to be drawn that the physical and mental condition, for which a member is discharged from service subsequently on the ground of disability, is due to his employment, which presumption, however, is rebuttable and the burden of proof lies on the Army authority to prove that such condition is not attributable to the Army service.

14. In the instant case, it is not the case of the respondents that the applicant was suffering from any ailment at the time of entry into service. The medical opinion, which has already been quoted above being not specific, cannot be the basis for disentitlement of the applicant from disability pension.

15. Having regard to the aforesaid position, we are of the considered opinion that the applicant is entitled to disability pension to the extent of 40%, which is rounded up to 50%, in view of the Govt. of India Circular dated 31.01.2001. The applicant would be entitled to arrear disability pension with interest @ 9% per annum w.e.f. 08.02.2002 i.e. the date when he first claimed the disability pension, which was rejected on 28.10.02. The said arrear along with interest shall be paid to the applicant within a period of 3 (three)

months from the date of receipt of a copy of this order. The applicant shall be paid regular disability pension to which he is found to be entitled to.

16. With the aforesaid directions, the OA is disposed of.

17. However, in the facts and circumstances of the case, there is no order as to costs.

MEMBER(A)

MEMBER(J)

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