ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI

O.A.No.5 of 2023

No. 14905960F Ex-Nk Paotinlian
Vill – Bewlalane
PO –Churachandpur,
Dist-Churachandpur, Manipur

..... Applicant

By legal practitioner
for Applicant
A.R. Tahbildar.

-Vs-

1 The Union of India
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi-11

2 Records, The Mech Inf Regiment
PIN-900476, C/O -56 APO

3 Additional Directorate General,
Personnel Services, PS-4(d),
Adjutant General's Branch
IHQ of MOD(Army), DHQ, PO-New Delhi

4 The Principal Controller of
Defence Accounts (Pension), Allahabad,
Pin-211014, Uttar Pradesh

..... **Respondents**

By legal practitioner
for Respondents
P.J. Barman, CGSC.

CORAM:

HON'BLE MR. JUSTICE K.HARILAL, MEMBER (J)
HON'BLE AIR MARSHAL BALAKRISHNAN SURESH, MEMBER (A)

ORDER
04.04.2024

1. Feeling aggrieved by the rejection of the applicant's claim for disability element of pension by Annexure B order dated 17th June, 2000 on the ground that his disability is not connected with military service, the applicant has preferred this Original Application and prayed for an order directing the respondents to grant disability element of pension to him with arrears for three years prior to the date of filing of this Original Application.

2. The applicant is an Ex-serviceman, who was enrolled in the Army on 10.10.1982 and was discharged from service with effect from 1.11.1999 after about 17 years of service in low medical category under Rule 13 (3)III(i) of the Army Rules, 1954. According to the applicant, at the time of enrolment, he was in SHAPE-1 and found physically and mentally fit for military service by the duly constituted Medical Board. In August 1987, he was posted in Sri Lanka and while discharging operational duty under "Operation Pawan" in Sri Lanka, he was diagnosed with the disease 'Generalised Seizure' and was placed in low medical category. At the time of discharge, Release Medical Board was held and the Board assessed

applicant's degree of disability at 20% for two years, but further opined that the said disability was neither attributable to nor aggravated by military service as it was not connected with service and he was not granted disability element of pension for the said two years. Though the Release Medical Board had assessed applicant's disability at 20% for two years, after the expiry of two years the respondents did not take any steps to constitute a Re-Survey Medical Board to re-assess his disability. Having actively participated in "Operational Pawan" in Sri Lanka, the applicant had undergone exceptional stress and strain in addition to the inherent stress and strain of the military duty. However, without considering the exceptional stress and strain of the arduous military duty, the Medical Board went wrong by declaring that the applicant's disability is not connected with military service without citing any reason in support of its conclusion. If the disease was constitutional in nature, reason as to why the disease, which was judged as constitutional, could not be detected at the time of enrolment as well as Annual Medical Examinations carried out yearly was also not recorded. He was physically fit until he was diagnosed with the disease 'Generalised Seizure' for the first time after five years from the date of enrolment. The Release Medical Board as well as the adjudicating authority miserably failed to grant the benefit under statutory presumption under Rules 4, 5 and 14(b) of the Entitlement Rules for Casualty

Pensionary Awards, 1982. After discharge, the applicant was not served with the medical documents. Therefore, he could not challenge the denial of disability element of pension to him. Subsequently, the applicant has obtained medical documents invoking the provisions under the Right to Information Act on 15.1.2022 vide Annexure A. Thereafter, the applicant has filed a statutory appeal, but the appeal was rejected for the reason that it was a time-barred appeal. In the above circumstances, he was left with no remedy other than approaching this Tribunal.

3. In the Affidavit-in-Opposition, the respondents admitted the tenure of service rendered by the applicant, but contended that he was not invalided out from service, he was discharged from service on 31st October, 1999 under Army Rule 13(3) III (i), in low medical category, and he was granted service pension only. It is also admitted that at the time of discharge, he was in low medical category for the disease CNS (INV-GENERALISED SEIZURE) 345 V67. Therefore, he was brought before a Release Medical Board, which assessed his disability CNS (INV-GENERALISED SEIZURE), 345 V67 at 20% for two years. But, the Board further opined that the disability was not connected with service. Subsequently, the adjudicating authority [PCDA (P), Allahabad] rejected his claim for disability element of pension on the ground that the disability was neither attributable to nor aggravated by military service as it was not connected with service. The

respondents unequivocally admitted in Paragraph 7 of the Affidavit-in-Opposition that at the time of enrolment, the applicant had gone through Primary Medical Examination by Recruiting Medical Officer and he was found fit for Army Service on 10 Oct 1982, and after five years of service, he was posted to Sri Lanka for "Operation Pawan". While he was engaged in "Operation Pawan", he was diagnosed with the disability 'Generalised Seizure 345 V67' on 20th January, 1988. However, disability element of pension was denied to him for the reason that the Release Medical Board opined that the disability was neither attributable to nor aggravated by military service.

4. Heard Mr. A. R. Tahbildar, learned counsel appearing for the applicant and Mr. P. J. Barman, learned Central Government Standing Counsel appearing for the respondents.

5. The gist of the arguments advanced by the learned counsel for the applicant is that the disease 'Generalised Seizure' had manifested after five years from the date of the enrolment, while the applicant was engaged in actual field operational duty abroad in Sri Lanka and thereafter, the said disease had manifested recurrently from 1988 to 1999, till his discharge from service in low medical category. Hence, it could be reasonably and unequivocally presumed that the disability could have arisen due to stress

and strain in operational duty as he was medically fit for five years till the manifestation of the disease and the recurrence of the disease till the discharge from service. Therefore, the Release Medical Board as well as the adjudicating authority ought to have assessed the cause of disability in view of the statutory presumptions under Rules 5 and 14(a) & (b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 and the Guide to Medical Officers (Military Pensions), 2002. Moreover, the Medical Board arrived at such a finding without any reasoning, and no attempt was made to assess the cause of disability, in view of the conditions of service and the nature of duty at the time of the onset of the disease. In short, the Release Medical Board as well as the adjudicating authority ought to have found that the disability of the applicant had arisen from the nature of duty while engaged in "Operation Pawan" in Sri Lanka.

6. *Per contra*, the learned Central Government Standing Counsel appearing for the respondents advanced arguments to justify the denial of disability element of pension to the applicant on the ground that the Release Medical Board opined that the disability was neither attributable to nor aggravated by military service as it was not connected with service. According to him, if the applicant was not satisfied with the denial of disability element of pension for the aforesaid reasons, he could have filed an appeal immediately after the denial of disability element; but he has filed

the appeal in the year 2022, after 22 years and got it rejected as time-barred. Therefore, there is no reason to interfere with the opinion of the Release Medical Board by this Tribunal.

7. The first question to be considered is whether this Tribunal has jurisdiction and power to interfere with the expert opinion of the Medical Board. But, we find that the aforesaid question is no longer *res integra* as it stands answered and covered by the decision of the Supreme Court in **Veer Pal Singh v. Secretary, Ministry of Defence [(2013) 8 SCC 83]**. In the aforesaid decision, the Supreme Court held as follows:

> "10. Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable."

8. It is discernible from the aforesaid decision that judicial/quasi-judicial forums have jurisdiction and power to decide the disputes relating to

premature release/discharge of the Armed Forces personnel from the military service by determining whether the conclusion reached by the Medical Board as well is legally sustainable. In short, the opinion of the medical experts is not excluded from judicial review. In view of the aforesaid decision in **Veer Pal Singh's case** *(supra)*, we find that in the instant case, this Tribunal has jurisdiction and power to interfere with the expert opinion of the Release Medical Board.

9. So, the next question to be considered is whether the denial of the disability element of pension to the applicant on the ground that the disability was neither attributable to nor aggravated by military service as it was not connected with the Army service is arbitrary, improper and legally unsustainable?

10. It is the specific case of the applicant that both the Release Medical Board and the adjudicating authority went wrong by not considering the relevant Rules and Regulations, which essentially require consideration for assessing the attributability and aggravation of a disease by the military service. What are the laws which essentially require consideration for the determination of attributability and aggravation of a disease by the military service? We are of the opinion that, in the instant case, Rules 5, 9, 14 and 15 of the Entitlement Rules for Casualty Pensionary Awards, 1982 ("Entitlement Rules, 1982", for short), Para 423 under Chapter VIII of the

Regulations for Medical Services, 1983 and all the provisions in the Guide to Medical Officers (Military Pension), 1980 are the relevant Rules and Regulations which essentially require consideration for the assessment of attributability and aggravation of a disease by the military service.

11. So, let us examine the aforesaid relevant Rules and Regulations.

12. Rules 5, 14(a), (b), (c) and 15 of the Entitlement Rules, 1982 are the relevant rules which provide a statutory presumption in favour of the military personnel to claim the attributability and aggravation of a disability by the military service, if they are invalided out/discharged/retired from service, with disability, in Low Medical Category.

13. The conspectus of the aforesaid Rules 5, 14(a), (b), (c) and 15 of the Entitlement Rules, 1982 and the effect and impact of the statutory presumptions in favour of the Armed Forces personnel can be briefly stated as given below:

13.1 From Rule 5, we find that the general statutory presumption is that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of enrolment. In the event of his subsequently being discharged from service on medical ground, any deterioration in his health which has taken place is due to service.

13.2 As per Sub-rules (a), (b) and (c) of Rule 14, a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of any disease/disability was made at the time of the individual's acceptance for military service. If an individual has been discharged from service on medical ground and the disease was accepted as having arisen in service, any deterioration in his health shall be presumed to have taken place due to military service, i.e., conditions of service, nature of duty, more particularly, stress and strain of duty and the climatic and environmental circumstances to which he was exposed during the period of service. For the determination of the entitlement, the evidence both direct and circumstantial, must be taken into account and the benefit of reasonable doubt, if any, shall be given to the individual. If it is established that the conditions of military service did not determine or contribute to the onset of the disease; but influenced subsequent courses of the disease, that will also fall for acceptance on the basis of aggravation. If the medical opinion does not hold with reasons that the disease could not have been detected on medical examination prior to the enrollment into service, the disease will be deemed to have arisen during service.

13.3 It is well accepted by Rule 15 that the onset and progress of some diseases are affected by environmental factors related to service condition, dietary compulsions, exposure to noise, physical and mental stress and

strain. For clinical description of diseases, reference shall be made to the Guide to Medical Officers (Military Pensions), 1980.

14. Regulations 423(a) and (c) of Regulations for Medical Services, 1983 are very relevant for the determination of the diseases and disability thereunder. It is well deducible from the aforesaid Regulation 423(a) and (c) that proof beyond doubt is not required to grant disability pension to an individual, who was discharged in low medical category with a disability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt and remote possibility in favour of the Armed Forces personnel is sufficient. If the evidence is so balanced and impracticable to determine a conclusion one way or the other, the benefit of doubt will be given more liberally to the individual, in cases occurring in field service/active service areas. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. If the medical opinion does not hold, for reasons to be stated, that the disease could not have been detected on medical examination prior to the acceptance for service, the disease will be deemed to have arisen during service.

15. Now, let us examine the question on whom the onus of proof lies under Rule 9 of the Entitlement Rules, 1982. It is well inferable from the aforesaid Rule 9 that the burden is on the respondents and the applicant will not be called upon to prove the reasons/circumstances, which attributed or aggravated the disease/disability due to the military service. So, the burden is heavily on the respondents to rebut the aforesaid statutory presumption which stands in favour of the applicant to deny disability element of pension to him. So, unless and until the said statutory presumption that the disability was caused by Army service is rebutted, the aforesaid statutory presumption will continue in force in favour of the applicant and thereby, he will be entitled to get disability element of pension, as the percentage of disability is not less than 20%. Did the respondents rebut the said statutory presumption in favour of the applicant?

16. In view of the aforesaid Rules and Regulations, we have meticulously examined the Release Medical Board proceedings and Annexure B order passed by the adjudicating authority. Neither the Release Medical Board nor the adjudicating authority has made any reference to any of the provisions under the Rules and Regulations or the Guide to Medical Officers, 1980 to support their finding that the disabiltiy was neither attributable to nor aggravated by Army service as it was not connected with

Army service. Since their findings are appealable before the first and second appellate authorities, the conspicuous absence of any reference to the said Rules, Regulations and Guidelines would give rise to a reasonable finding that they have not considered the same before arriving at such a finding, and we find so. The Release Medical Board in a perfunctory manner stated that the disability is not connected with service. No reasoning has been made to arrive at such a finding. It was incumbent upon the Release Medical Board as well as the adjudicating authority to arrive at a conclusion as regards the attributatility and aggravation by rebutting the statutory presumption as referred above. It is to be remembered that a finding without reasoning is not a finding sustainable under law. As per the Release Medical Board proceedings, there was no family history of 'Generalised Seizure' and the disability was not in existence at the time when the applicant was enrolled in the Army. In view of the admitted fact that the onset of the disease was on completion of five years after the enrolment, when he was engaged in "Operation Pawan" in Sri Lanka, the Release Medical Board as well as the statutory authorities ought to have granted the benefit of presumption of attributability or at least aggravation under the benefit of reasonable doubt to the applicant, particularly when there was no medical opinion on record to the effect that the disease 'Generalised Seizure' could not have been detected at the time

of enrolment by the Medical Board. Hence, we find that the stress and strain caused by the nature of applicant's duty while he was engaged in "Operation Pawan" were the triggering factors which attributed 'Generalised Seizure' to him and further it was aggravated by recurring manifestation during the period of remaining service till his discharge from service. The recurrence of the disease while in service would prove the aggravation of the disease after the onset of the disease on 20.1.1988. The particulars of the recurrence of the disease as shown in the Release Medical Board proceedings are reiterated below:

Illness, Wouhd, Injury	First started Date	Place	Where treated	Approximate dates and period treated
FITS (INV)	200188	Sri Lanka	354 Fd Amb	200188 to 200188–01 day
-do-			MH Madras	200188 to 040288-15 days
GENERALIS ED EPLISED			CH (SC)Pune	060288 to 030388-26 days
-do-			MH Madras	040388 to 090388-06 days
-do-			MH Ahmednagar	240489 to 030589-10 days

-do-			CH(SC) Pune	030589 to 300589-28 days
-do-			MH Ahmednagar	300589 to 070689-07 days 200690 to 120790-23 days 090491 to 240491-17 days
SEIZURE DISORDER			172 Mil Hosp	030594 to 090594-07 days

17. At this juncture, we take support from Para 33 of the Guide to Medical Officers (Military Pensions), 2002 as it is a scientific reasoning, in support of our reasoning. As per Para 33, the factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion and pyrexia and loud voice. So, it could be reasonably presumed that he would have undergone emotional stress and strain, physical and mental exhaustion and sleep deprivation during the period of "Operation Pawan" and that would have caused the disease 'Generalised Seizure' as he was physically and mentally fit for five years up to his participation in "Operation Pawan". Both the authorities miserably failed to consider the applicant's nature of duty, emotional stress and strain and mental exhaustion at the time when the disease has manifested. Thus, the respondents miserably failed to discharge the onus of proof under Rule 9 of the Entitlement Rules, 1982. The respondents ought to have rebutted the possibility of attributability and aggravation by considering both direct and

circumstantial evidence in connection with the nature of duty, climatic conditions and other environmental factors to which he was exposed at the time of the onset of the disease during the period of "Operation Pawan" in Sri Lanka. But no attempt was made in this respect. Therefore, the statutory presumption that the disability was caused by the Army service prevails over the finding of the Release Medical Board and the adjudicating authority.

18. In the instant case, the finding that the disability was neither attributable to nor aggravated by military service was made under the Entitlement Rules, 1982. But, the respondents have arrived at the aforesaid finding, without rebutting the statutory presumptions under the said Rules. The effect and impact of the aforesaid unrebutted statutory presumptions, while adjudicating the claim for disability pension have been considered and found in favour of the Armed Forces personnel by the Supreme Court in **Dharamvir Singh v. Union of India and others [(2013) 7 SCC 316]**, **Sukhvinder Singh v. Union of India and others [(2014) 14 SCC 364]** and **Union of India and others v. Rajbir Singh[(2015) 12 SCC 264].**

19. In the above analysis, we find that the statutory authorities ought to have found the possibility of attributability and aggravation under the benefit of doubt as the onset of the disease was during the period of applicant's active participation in "Operation Pawan" in Sri Lanka, the

recurrence of the aforesaid disease as stated above, and its further presence at the time of his discharge from service.

20. In view of the above, we are of the view that the denial of disability element of pension to the applicant for the reason that the disability was neither attributable to nor aggravated by Army service, as it was not connected with the Army service is improper, arbitrary and legally unsustainable. So, we find that the applicant was entitled to get disability element of pension at 20%.

21. Then, the points to be considered are, what would be the period of entitlement of disability pension? Is the applicant entitled to disability pension for life? Is he entitled to get the benefit of rounding off.

22. It is true that the Release Medical Board found disability for two years only. So, the applicant was entitled to get his disability reviewed/re-assessed immediately before or after two years from the date of discharge. But admittedly, the respondents have not taken any step for that. So, we cannot find fault with the applicant for the absence of review/re-assessment after two years. Since more than 24 years have elapsed after the discharge of the applicant from service, it is not just and proper to conduct review/re-assessment at present. As per Rule 4 of the Entitlement Rules, 1982, "an individual, who, at the time of his release under the Release Regulations, is

in a lower medical category than that in which he was recruited will be treated as invalided from service". In the instant case, indisputably the applicant was discharged from service in low medical category. Since no disability was noted on the records at the time of his enrolment and he was physically and mentally fit for Army service till his active participation in "Operation Pawan" and he was released in lower medical category than the category in which he was recruited, he should have been treated as invalided out from Army service. If that be so, he should have been granted disability element of pension for life at 20% with rounding off benefit as his discharge was after 1.1.1996. Moreover, a soldier, who was invalided out from service due to the disability which was caused by his service in field operation, cannot be allowed to suffer by forfeiting his entitlement of disability element of pension for life for the laches and negligence from the part of the respondents to conduct review/re-assessment after two years. That apart, the respondents have stopped the recurring periodical review of the disability of the individual, except on the request of the individual, by Policy Letter No.1(2)/97/D (Pen-C) dated 07.02.2001 issued by the Ministry of Defence, Government of India. Hence, we find that he is entitled to get disability element of pension for life at 20% which will stand rounded off to 50%. His entitlement for rounding off benefit is supported by the decision of the Supreme Court in **Union of India and others v. Ram Avtar (Civil**

Appeal No.418 of 2012) and subsequent policy letter dated 31.01.2001 issued by the Government of India and Circular No.301 dated 27.5.2002 of the PCDA(P), Allahabad. Since there is an inordinate delay in filing this O.A., arrears due to him will stand restricted for three years prior to the filing of this O.A. only **[Union of India and Others v. Tarsem Singh [(2008) 8 SCC 648].**

23. In the result, the respondents are directed to issue a corrigendum PPO granting disability element of pension to the applicant for his disability 'Generalised Seizure' at 20% which would stand rounded off to 50% for life and pay the arrears for a period of three years prior to the filing of this O.A. at the earliest, at any rate, within five months from the date of receipt of a copy of this Order, failing which the unpaid amount will carry interest at the rate of 9% per annum.

24. The Original Application is allowed accordingly.

25. No order as to costs.

(AIR MSHL BALAKRISHNAN SURESH)
MEMBER (A)

(JUSTICE K. HARILAL)
MEMBER (J)

Sha/Mc/kk