IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI

OA - 49 of 2017

PRESENT

HON`BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

No. 4360442A Ex Nk Lalengvel Darngawn
Vill-Rengkai
PO-Churachandpur
Dist-Churachandpur (Manipur)

..... Applicant

By legal practitioners for Applicant.
Mrs. Rita Devi
Mr. A.R.Tahbildar

-VERSUS-

1. **The Union of India through**
   the Secretary, Ministry of Defence,
   Sena Bhawan, New Delhi-11

2. **Records the Assam Regiment**
   PIN(ARMY)-900332
   C/o-99 APO

3. **Additional Directorate General**
   Personnel Services, PS -4(d)
   Adjutant General's Branch
   Integrated HQ 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 the Respondents
Mr. C. Baruah, **CGSC.**

Date of Hearing : 30.07.2018
Date of Judgment & order: 03-08-2018

JUDGMENT & ORDER

(Per Lt Gen Gautam Moorthy, Member (A)

1. This is the second round of litigation. The applicant No. 4360442A Ex Nk Lalengvel Darngawn was enrolled in the Army as Sepoy on 12.10.1988. In December 2009 he was diagnosed with “Diabetes Mellitus Type-II” and placed on Permanent Low Medical Category P3 (P) by the Release Medical Board held on 31.10.2010 assessing the degree of disability @ 20% for life. He was discharged from service on completion of his term of engagement on 01.11.2010 in Low Medical Category P3 (P). The disease of the applicant was classified as neither attributable to nor aggravated by military service. However, the percentage of disablement was assessed as 20% for life.

2. After his retirement, the applicant had applied for disability pension which was turned down vide Records The Assam Regiment letter dated 08 Nov 2010 on the ground that his disease was neither attributable to nor aggravated by military service. Accordingly, he preferred an application on 29.05.2016, which was rejected by the authorities on 16.06.2016 (Annexure-E) on the same ground.

3. Being aggrieved, he approached this Bench by filing the OA-61 of 2016 on 15.11.2016. After hearing, this Bench vide order dated 29.11.2016, directed the applicant to file an appeal against the decision of the authorities within three months of the date of filing of the appeal. The appellant authority was directed to consider the same on merit and not to reject on the ground of limitation.

4. As no reply was received from the authorities, the applicant has filed this OA (49 of 2017) on 16.11.2017. The respondents accepted notice of the OA and have stated that since the Release Medical Board found the disease of the applicant as neither attributable nor aggravated

to military service and percentage of disability was assessed as 'NIL', he is not entitled to any disability pension. Though, the *'Percentage of the Disablement with Duration'* was assessed as 20% for life, the *'Disability Qualifying for Disability Pension with Duration'* and *'Net Assessment Qualifying for Disability Pension with Duration'* were both assessed as 'Nil' in para 6 of the Release Medical Board Proceedings. .

5. Heard learned counsel appearing for both the parties.

6. Learned counsel appearing for the applicant states that there are catena of judgments which held the claim of the applicant in granting disability pension even those who have superannuated from service.

7. In the case of ***UOI Vs Rajvir Singh (Supra),*** Supreme Court after considering Army Regulations 173 (Parameteria) also considered the Appendix 2 of the Entitlements Rules of Casualty Pensioner Award 1982 held within terms of rules 5 and 9 shall be on the establishment that claimant shall be entitled for disability pension. The relevant portions of ***Rajvir Singh Vs UOI*** are quoted as under :-

> ***7.*** *The claims of the respondents for payment of pension, it is a common ground, are regulated by Pension Regulations for the Army, 1961. Regulation 173 of the said Regulations provides for grant of disability pension to persons who are invalided out of 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 above. The regulation reads:*
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> *"**173. Primary conditions for the grant of disability pension**: Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*
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> ***8**. The above makes it manifest that only two conditions have been specified for the grant of disability pension viz. **(i)** the disability is above 20%; and **(ii)** the disability is attributable to or aggravated by military service. Whether or not the disability is attributable to or aggravated by military service, is in turn, to be determined under Entitlement Rules for Casualty Pensionary Awards, 1982 forming Appendix-II to the Pension Regulations. Significantly, Rule 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982 also lays down the approach to be adopted while determining the entitlement to disability pension under the said Rules. Rule 5 reads as under:*

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) 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 entrance.
(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."

***9**. Equally important is Rule 9 of the Entitlement Rules (supra) which places the onus of proof upon the establishment. Rule 9 reads:*

*"**9. Onus of proof. –** The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."*

***10**. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service, subject to the condition that if medical opinion holds for reasons to be stated that the "disease could not have been detected on medical examination prior to acceptance for service, the same will not be deemed to have so arisen". Rule 14 may also be extracted for facility of reference.*

*"**14. Diseases.-** In respect of diseases, the following rules will be observed-*

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) 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 military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted 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."
(emphasis supplied)

***11**. From a conjoint and harmonious reading of Rules 5, 9 and 14 of Entitlement Rules (supra) the following guiding principles emerge:*

i) *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 entrance;*

ii) *in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;*

iii) *the 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 military service; and*

iv) *if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated.*

12*. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement: General principles", and the approach to be adopted in such cases.* ***Paras 7, 8 and 9*** *of the said guidelines reads as under:*

"***7.*** *Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination. The following are some of the diseases which ordinarily escape detection on enrolment:*

(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,
(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.
(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.
(e) Relapsing forms of mental disorders which have intervals of normality.
(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. *The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect. In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.*

9. *On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."*

13. *In* ***Dharamvir Singh's*** *case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:*

"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 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 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)."*

14. *Applying the above principles this Court in* ***Dharamvir Singh's*** *case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also held that Union of India had failed to bring on record any document to suggest that Dharamvir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed:*

> *"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 the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the 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."*

> ***15**. The legal position as stated in **Dharamvir Singh's** case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.*

8. In another important judgment in Civil Appeal No. 11208 of 2011 **Union of India vs. Angad Singh Titaria** decided on 24.02.2015 the respondent has superannuated from service after completion of 30 years 11 months of service with a composite disability i.e. first disability of Coronary Heart Disease and second disability of Diabetes Mellitus Type-2 which was found to be constitutional in nature and not attributable or not aggravated by service in Indian Air Force. Accordingly, the disability pension claim preferred by the respondent had been rejected. However, the Armed Forces Tribunal, Chandigarh Bench in OA 837 of 2010 had

allowed the grant of disability pension, the appeal of which was dismissed by the Hon'ble Supreme Court on the same principle rendered by the Hon'ble Apex Court in the case of **Union of India vs. Rajbir Singh and others** in Civil Appeal No. 2904 of 2011 decided on 13.02.2015 (Supra) and the Hon'ble Court had ruled *"We are of the considered opinion that the Tribunal had not committed any error in awarding disability pension to the respondent for 60% disability from the date of his discharge along 10% per annum interest on the arrears. For all the reasons stated above, we do not find any merit in this appeal and the same stands dismissed without any order as to costs."*

9. In the instant case, the applicant was enrolled in the Army on 12.10.1988. Till December, 2009, his disease was not detected. He served in various places without any diagnosis of the disease for more than 22 years. Even if his disease is accepted as constitutional in nature and not attributable to service, it certainly must have been aggravated by military service. It is unacceptable that his disease could not be detected during long tenure of service of 22 years and only in the event of completion of his terms of engagement, he was found in Low Medical Category P3 (P). In view of Rule 14(a) & (c), even if it is established that conditions of military service did not determine or contribute to the onset of the disease, certainly it must have influenced the subsequent course of the disease.

10. Regulation 178 of the Pension Regulations for the Army, Part-I, 1961 pertains to Manifestation of a disability even after an individual is retired/discharged from service which is reproduced below –

> *"178. An individual who is retired/discharged from service, otherwise than at his own request, with a pension or gratuity, but who, within a period of ten years from the date of retirement/discharge, is found to be suffering from a disease which is accepted as attributable to his military service may, at the discretion of the competent authority, be granted, in addition to his pension/gratuity, a disability element at the rate appropriate to the accepted degree of disablement and the rank last held, with effect from such date as may be decided upon in the circumstances of the case."*

11. Regulation 179 pertains to disability at the time of retirement/discharge which is reproduced below –

> "*179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension*

from the date of retirement, if the accepted degree of disability is 20 percent or more and service element if the degree of disability is less than 20 percent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be."

12. In T.A. No. 8 of 2014, the Kolkata Bench of AFT in the case of ***Ex-628286 CPL RC Pradhan Vs. Union of India & Others*** which pertains to an Air Force personnel and is *parameteria* to this instant case, this regulation was interpreted as under:

Interpretation:-

25*. Where a disease passes on to aggravated condition on different stages of life or in different situation because of service condition then while denying service benefit in the form of disability pension or otherwise it shall be obligatory for the Air Force to establish that the person concerned was suffering with the aggravated disease before entering into Air Force.*

26*. It is well settled proposition that in case a provision or a construction gives rise to anomalies or leads to a manifest construction of the apparent purpose of the enactment or provision then such meaning should be given which serve the purpose or beneficial to the society vide.* ***AIR 1959 SC 422 – Viluswami Thevar Vs. G. Raja Nainar; air 1955 SC 830 – Tirath Singh Vs. Bachittar Singh; AIR 2002 SC 1334 – Padmasundara Rao Vs. State of T.N.; AIR 2004 SC 236 – Modern School Vs. Union of India and 1979 SCC Vol 2 Page 34 – Chief Justice of Andhra Pradesh and Others Vs. I.V. Dixitulu and Others.***

27. *Nothing has been brought on record to indicate that the applicant was suffering from disease in question at the time of entry into the service which cannot be detected. In such a situation there appears no doubt that the applicant is entitled to disability pension and it may be held that condition was aggravated because of air force service. It should always be kept in mind that benefit available from beneficial legislation should not be withheld or rejected on hyper technical ground. In the event of conflict or two possible views, the view which favour to extend the benefit of such legislation should be accepted."*

13. Having regard to the aforesaid facts and judgments, we find that the applicant is entitled to receive 20% disability pension rounded off to 50% with effect from three years prior to filing of the appeal i.e. from 16.11.2017 for life. Arrears will be paid within a period of three months from the date of receipt of this order, failing which a simple interest of 8% will be levied on the arrears.

14. No order as to costs.

15. The OA is accordingly disposed off.

MEMBER (A) **MEMBER (J)**

Kalita