IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI.

OA 31 OF 2014

P R E S E N T
HON'BLE MR. JUSTICE NAWAL KISHORE AGARWAL, MEMBER (J)
HON'BLE LT GEN (RETD)GAUTAM MOORTHY, MEMBER (A)

Ex-Hav Jhunu Kumar Das (No. 15354466F)
S/o Rasendra Kumar Das
R/o Vivekananda Road,
House No. 11, Lane No. 5
Silchar-785007

..... **Applicant**

By legal practitioner
for the applicant
Ms Rita Devi
Mr. AR Tahbildar

- Versus -

1. Union of India
   Through its Secretary
   Ministry of Defence,
   Govt. of India,
   Sena Bhawan
   New Delhi -110011

2. The Director, P.S-4 AGS Branch
   Integrated Head-quarter of Defence (Army)
   Delhi Headquarter,
   New Delhi-110011

3. Chief Record Officer,
   The Record Signals,
   C/o 56 APO,
   PIN-908770

4. The Commanding Officer,
F Composite Signal Regiment
PIN-918394
C/O 99APO

5. Senior Account Officer
PCDA (P), Allahabad-21

.....Respondents
Legal practitioner for the
Respondents
Mr. N. Baruah CGSC

Date of order: **27.01.2016**

JUDGMETN AND O R D E R

(Hon'ble Justice NK Agarwal, Member (J)

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 claiming disability pension.

2. Facts of the case in brief are that the applicant Jhunu Kumar Das was enrolled as Sepoy Signalman in the Indian Army (Signals) on 21.06.1986. In due course he was promoted to the rank of Havildar. During his long tenure of service of 24 years, the applicant also served in the high altitude areas. At the relevant time the applicant was serving in F Company Signal Regiment in Shillong.

The Medical Board had earlier granted extension of 2 (two) years service commencing from 01.06.2010 to 20.06.2012 to him. During that period, the applicant was subjected to Medical Board for routine health check-up and he was detected with Diabetic Mellitus Types II and placed in permanent Low Medical Category of P2 (P) with 30% disability and was recommended for discharge from service on medical grounds. Consequently, he was discharged from service from 30.06.2010. After discharge, though the applicant was granted regular pension and other retiral benefits, the authorities have not granted disability pension. The applicant's claim for grant of disability pension has been rejected by the Chief Record Officer (the Records Signals, C/o 56 APO) vide communication dated 20th Jan 2011 on the grounds that in terms of Regulation, 179 of Pension Regulations for the Army 1961, Part-I, the disability 'Diabetes Mellitus Type-II' as recorded by the Medical Board Proceedings is neither attributable to nor aggravated by Military Service. Therefore, he is not entitled to disability pension.

3. The appeal preferred there against by the applicant before the appellate authority was not considered by the authority. Hence this Original Application has been filed for grant of disability pension.

4. In the reply filed by the respondents, it has been stated that at the time of discharge, the applicant was placed in Low Medical Category P2 (P) E1. The applicant was brought before the duly constituted Release Medical Board held on 14.06.2010 wherein his disability was opined as ***"neither attributable to nor aggravated by military service and not connected with military service"*** with the assessment of the degree of disability at 30% for life. In terms of Regulation 179 of the Pension Regulations for the Army, 1961, Part-I, the disability of the applicant was found neither attributable to nor aggravated by military service as recorded in the Release Medical Board proceeding and his disability pension was accordingly rejected. The said fact was communicated to the applicant vide Signal Records letter No. P/15354466F/Bd-Nov10 /REJ-009/DP-1/NER dated 20 January 2011 with an advice to prefer an appeal to the Appellate Committee. The

appeal preferred there against by the applicant was also rejected on the ground that “The ID is a metabolic disorder with no service related cause. The onset of the ID was in February, 2009 when he was posted to a peace station and he continued to serve in peace station till his release from service, hence RMB has appropriately held the disability as neither attributable to nor aggravated by military service.” Therefore, the applicant has not been granted disability pension and the application is liable to be dismissed.

5. We have heard the learned counsel for both the parties and perused the records.

6. Indisputably the applicant was enrolled in the Indian Army on 21.06.1986 and was discharged from service on 30.06.2010 without completion of extension period being a Low Medical Category and was denied disability pension on the grounds that the disability was neither attributable to nor aggravated to by military service and not connected with military service after completing almost 24 years of military service. It is also

not in dispute that at the time of his enrollment in 1986 he was medically and physically examined and found fit as per prescribed medical standards and was not suffering from any disease including the disease in question i.e. “TYPE 2 DIABETES MELLITUS’ and at the time of discharge his disability was found to be @ 30% for life which is the bare minimum in terms of Army Regulation 173 of the Pension Regulations for the Army, 1961. The Medical Board has rejected the claim for disability pension on the ground that the disability was not attributable to or aggravated by military service. The only question arises on the above backdrop is whether or not the Medical Board’s opinion is in itself sufficient to deny the applicants claim for disability pension.

7. Before adverting to the facts of the case it would be appropriate to refer to Pension Regulation that governs the field. Regulation 173 reads :

> “(173 Primary conditions for grant of disability pension):
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> Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is 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 per cent or over." The question whether disability is attributable to or aggravated by military service shall be determined under the Rule in Appendix II i.e. Rules for casualty pensionary awards 1982."

8. For the purpose of evaluation of disabilities, two presumptions are provided under Rule 5. They read thus :

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

(a) A member is presumed to have been in sound physical and mental conditions 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. Rule 14 of the Entitlement Rules stipulates how to determine whether a disease shall be deemed to have arisen in service on not. It reads thus :

"14. Disease- In respect of disease, the following rule 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 course 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.

10. Rule 9 of the Entitlement Rules mandates upon whom the burden lies to prove the entitlement conditions. The said Rule is quoted below:

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

11. While considering the aspect of onus of proof, the Hon'ble Apex Court in the case of Dharamvir Singh Vs Union of India reported in 2013 Vol. VII SCC 316 has observed as under:-

"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. The claimant has a right

to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally."

12. The Hon'ble Apex Court in a similar case-Union of India Vs Rajbir Singh-Civil Appeal No. 2904 of 2011 etc. decided on 13.02.2015 after considering Dharamvir Singh (Supra) and upholding the decision of the Tribunal granting disability pension to the claimants observed :

> ".....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 g round, 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.....
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> 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 disability at times even before they completed their tenure in the armed forces.....
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> .....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."

13. Hon'ble Supreme Court has reiterated the same view in Civil Appeal No. 11208 of 2011 decided on February 24, 2015 in the case of Union of India Vs. Angad Singh Titaria (2015 SCC online SC 181).

14. The Principal Bench of the Armed Forces Tribunal, New Delhi in OA No. 171 of 2014 between Nb. Subedar Mani Kumar Martand and UOI & Ors vide Order dated 13.01.2015 dealing with the ailment of Type 2 Diabetes Mellitus in substance has held that the disease is aggravated by military service.

15. Reverting to the facts of the case admittedly the applicant had served in high altitude area wherein the diabetes might have aggravated. General guidelines for

assessment of individual disabilities and their causal relationship to military service has been issued by the Ministry of Defence, Govt. of India in the year 2008. Para.26 of the said guidelines stipulates that Type 2 Diabetes Mellitus will be conceded aggravated if onset occurs while service in Field, CI Ops,HAA and prolonged afloat service.

16. Considering the facts of the case in the light of afore-mentioned rules and regulations and principles of law settled by the Hon'ble Apex Court in its various pronouncements, we are of the considered opinion that the applicant has been wrongly denied benefit of disability pension. Moreover, no reasoned opinion has been given by the Medical Board giving out the reasons on the basis of which the Medical Board concluded that the petitioner's disease is neither attributable to nor aggravated by military service. A mere conclusion without reason is not a valid medical opinion. Therefore, medical opinion cannot be accepted and the applicant is entitled to the relief as per the aforesaid discussion including the benefit of rounding off the disability pension in the light of the

decision of the Hon'ble Supreme Court delivered in Civil Appeal No. 418/2012-Union of India Vs. Ramabatar decided on 10.12.2014.

17. For the reasons mentioned above, the O.A. is allowed. It is held that the petitioner is entitled to 30% of disability pension which is to be rounded off from 30% to 50% according to the Government's decision dated 31.01.2001. The petitioner is also entitled to arrears of the past three years along with interest @ 12% p.a. The order be implemented within three months from the date of receipt of this order. No order as to costs.

A plain copy of the order, duly countersigned by the Tribunal Officer be furnished to both sides after observation of usual formalities.

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

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