A F R

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH
T.A. No. 54/2012

THIS 9TH DAY OF OCTOBER, 2015

CORAM
HON'BLE JUSTICE SUNIL HALI, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) **Ex CPL Nilamadhab Mishra**
S/O Sri Sarat Kumar Mishra,
Vill Jaypur,
P.O./P.S. Sakhigopal,
Dist. Puri.

Versus

RESPONDENT(S)

1. **The Union of India**
   Represented by Under Secretary,
   Ministry of Defence,
   New Delhi- 1.

2. **PCDA (P) (Air Force Cell),**
   Draupadi Ghat,
   Allahabad-14 (U.P.).

3. **Air Officer-in-charge,**
   Administration,
   Air Heqdquarter Vayu Bhawan,
   New Delhi -1.

4. **Air Officer-in-charge,**
   Air Force Record Office,
   Subroto Park,
   New Delhi-10.

5. Secretary,
   Air Force Group Insurance Scheme,
   Subroto Park,
   New Delhi-10.

For the petitioner (s) Mr. Bisikesan Pradhan, Advocate

For the respondents Mr. Dipak Kumar Mukherjee, Advocate

O R D E R

PER LT GEN GAUTAM MOORTHY, HON'BLE MEMBER(ADMINISTRATIVE)

1. The instant application i.e. T. A. No.54 of 2012 arose out of W.P.(C) No.13248 of 2006 wherein the applicant Ex-Corporal Nilamadhab Mishra agitated before the Hon'ble High Court of Orissa at Cuttack for not being entitled to disability pension since discharge of the applicant, according to him, related to the disease 'Schizophrenia' that the applicant was suffering from. He has challenged what he considered an illegal and arbitrary discharge and subsequent rejection of disability claim as well as disability pension.

2. The brief fact of the case is that the applicant was enrolled in the Indian Air Force (IAF) in December, 1983 and was discharged from service with effect from 14.06.2000 under clause 15(2)(g)(ii) – 'Service no longer required – unsuitable for retention in the Air Force' after rendering a total 16 years and 178 days of qualified service and 100 days of non-qualified service. In the year 1991 he presented himself with a complaint of worries, headache, lack of sleep and started behaving in an odd manner. He was diagnosed as a case of 'unspecified psychosis' and was treated accordingly. He responded well to the treatment and made satisfactory recovery and was placed in low medical category 'CEE' on 25.01.1992 which was then upgraded to medical category 'AYE' on 13.01.1994. In April, 2000 the applicant was admitted to the 167 Military Hospital and was transferred to the Command Hospital (SC), Pune where he was diagnosed as a case of 'Schizophrenia' and was recommended for down gradation of medical category. The petitioner was then released from service on disciplinary grounds vide release order dated 25.05.2000. His Release Medical Board (RMB) was held on 20.06.2000 where the disability was noted as 'Schizophrenia' and was assessed at 50% for two years. It was also recommended that the disability as neither attributable to nor aggravated by military service. It is pertinent to mention here that the RMB was held at a belated stage after the applicant was discharged from service on disciplinary grounds. The PCDA(P), Allahabad on 07.03.2002 rejected the disability pension claim of the applicant. The applicant then preferred his first appeal which was rejected by ACFA on 06.08.2004 and the second appeal was also rejected by the DMACP on 22.09.2005 for the same reason.

3. Feeling aggrieved, the applicant approached the Hon'ble High Court of Orissa at Cuttack by filing a writ petition (No.13248/2006) which was subsequently transferred to this Tribunal and re-numbered as T. A. No.54/2012.

4. In the counter affidavit which the respondents had filed before the Hon'ble Orissa High Court, having countered in all the above-stated facts, reiterated that the applicant was discharged from service on disciplinary grounds under clause 'service no longer required'. Further they have stated that the primary condition for admission of disability pension is that the disability must be attributable to or aggravated by military service and the degree of disablement should be more than 20% and since these were not fulfilled, the applicant was correctly denied disability pension.

5. Rule 15 of the Air Force Rules, 1969 deals with the authorities empowered to authorise discharge. For convenience, the relevant provisions of the said Rules are quoted below:-

*"**15. Authorities empowered to authorize discharge**.- (1) xxxxx*

(2) Any power conferred by this rule on any of the aforesaid authorities may also be exercised by any other authorities superior to it.

T A B L E

Class	*Cause discharge*	*Competent authority to authorize discharge*	*Special instruction*
Xxx	*xxx*	*xxx*	*xxx*
Persons enrolled under under the Act who have been attested.	*Not suitable for retention in the Air Force.*	*Air Force-in-charge/ Administration*	--
Xxx	*xxx*	*xxx*	*xxx*

6. On perusal of the findings of the RMB dated 19.06.2000 it is seen that in the medical opinion the Board while confirming the cause that the applicant indeed suffered from 'Schizophrenia' has stated that 'It is a constitutional disease not connected with service'.The condition of military service did not contribute to its onset or subsequent course of the disease. The individual was not under severe physical training/HAA/dietary compulsions etc. and fixed the percentage of disablement at 50% for a duration of two years assessing the composite assessment at 50%.

7. Ld. counsel for the applicant vehemently argued that in the light of a catena of judgments primarily among them the decision of the Hon'ble Apex Court in the case of Dharamvir Singh v. Union of India & Ors. reported in (2013) 7 SCC 316 and thus this case is a fit case for granting disability pension.

8. Although the applicant was not invalided out of service on medical grounds but on disciplinary grounds, it does not place a bar on him as the RMB has clearly stated that the applicant was suffering from Schizophrenia when he was discharged from service. Para 179 of the Pension Regulation clearly states that an individual retiring/being discharged on completion of tenure or on completion of service limit, if found suffering from disability attributable to or aggravated by military service and recorded by Service Medical Authority, 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 per cent or more, and service element if the degree of disability is less than 20 per cent. The relevant portion of Regulation 179 is reproduced as under :

> *"Disability at the time of retirement / discharge.*
> *179. An individual retires / 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 disability attributable to or aggravated by military service and recorded by service medical authority, shall be deemed to have invalidated out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 per cent or more, and service ailment if the degree of disability is less than 20 per cent. The service pension / service gratuity, if any sanctioned and paid, shall be adjusted against the disability pension / service element as the case may be.*
> *(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement / discharge on the basis of the rank held on the date on which the wound / injury was sustained or in the case of decease on the date of first removal from duty on account of that disease. "*

9. It may be seen from the above that this impugned case fits clearly in the "deemed to have been invalided out of service" clause. Therefore, only two issues come up for our consideration. These are (i) whether the disability which was neither attributable nor aggravated can qualify for disability pension; and (ii) whether the discharge under the Air Force Rule 15(2)(g)(ii) would disqualify him from earning his disability pension.

10. Pension Regulation 173 deals with primary condition for grant of disability pension. For convenience the relevant provision of Pension Regulation 173 is reproduced below :

"Primary condition for grant of disability pension
173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle causality and is assessed as 20 per cent or over."

11. So far as the first issue is concerned this issue is no longer Res Integra. The Hon'ble Apex Court has ruled that a person who is found medically fit and in good health at the time of his initial recruitment and was subsequently discharged from service being in low medical category, the disease would be presumed to have been acquired during his military service. In case of his discharge from service on account of disability it shall be presumed that the disability has been acquired during the course of his military service. In case a person is discharged on account of low medical category, the medical board should opine with reasons that the disease could not have been detected at the time of initial recruitment. In this context we are supported by a decision of the Hon'ble Apex Court in the case of Dharamvir Singh vs Union of India & Ors reported in (2013) 7 SCC 316 (supra). The relevant portion of the judement is quoted below:-

"Allowing the appeal, the Supreme Court held :

Under Regulation 173 of the Pension Regulation for the Army, 1961, disability pension in the normal course is to be granted to an individual: (i) who is invalidated out of service on account of disability which is attributable to or aggravated by military service, and (ii) which assessed at 20% or over disability unless otherwise specifically provided. A disability "attributable to or aggravated by military service" is to be determined under the Entitlement Rules for Casualty Pensionary Award, 1982 as shown in Appendix II. A member of the Armed Forces is presumed to be in sound physical and mental condition upon entering service if there is no note or record to the contrary in his records at the time of entrance. In the event of his subsequently being discharged from service on medical ground any deterioration in his health is to be presumed due to service. [Rule 5 read with Rule 14(b)]. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement to disability pension 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). 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 be circumstances of duty in military service.[Rule 14(c)] If the 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)]."

12. So far as the second issue is concerned it is very clear that the individual is in receipt of his service pension vide PPO No. 08/14/B/05117/2001, despite having been discharged on disciplinary grounds. Hence, if the service pension is being authorized to the applicant despite

him having been discharged on disciplinary grounds, there is no reason to deny him disability pension on the same grounds.

13. Hence, in view of the discussion stated above, we allow the TA and direct the respondents to grant the applicant the disability pension as recommended by the RMB within four months from this date. However, the arrears of pension shall be from three years prior to the date of filing the writ petition. No order as to costs.

14. The original records submitted by the respondents be returned to them under proper receipt.

15. A plain copy of the order, duly counter signed by the Tribunal officer, be given to both the parties after observing usual formalities.

(Lt GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE SUNIL HALI)
Member (Judicial)