FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO: T. A NO. 64 OF 2012 {WP (S) No. 1301 of 2010)}

ON THIS 8TH DAY OF JANUARY, 2014

CORAM HON'BLE MR. JUSTICE RAGHUNATH RAY, MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Mohammed Khurshid
S/o M. Serajuddin Tailor,
R/o Mohalla- Kuli Para (Habipur),
P.O. Sahebganj, P.S. Sahebganj (Town),
Dist. Sahebganj,

.....Applicant

-VS-

1. Union of India through
   The Secretary, Defence, D (Pen) A & AC
   Room No. 206, Sena Bhawan, New Delhi-110 001.

2. The Chief of Army Staff, Indian Army,
   New Delhi

3. Director General, Personnel Services,
   Adjutant General Branch, Army HQ,
   P.O. New Delhi-110 011

4. Addl. Director General, Personnel Services,
   Adjutant General Branch, DHQ,
   P.O. New Delhi-110 011

5. Major SRO for Officer-in-Charge, Records,
   Army Medical Corps, Record Office,
   Pin: 900450 C/O 56 APO

6. The Principal CDE (Pension), G 3/Group 8
   Draupadi Ghat, Allahabad.
   Uttar Pradesh

.... Respondents.

For the Applicant : Ms Maitrayee Trivedi Dasgupta, Counsel

For the respondents : Mr. Souvik Nandy, Counsel

ORDER

PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

This petition was initially filed before the Hon'ble High Court of Jharkhand at Ranchi as writ petition No. WP(S) 1301/2010 wherein the petitioner, Md. Khurshid prayed for a direction upon the respondents to grant him disability pension. After establishment of the Armed Forces Tribunal, the said writ petition has been transferred to this Bench for disposal and accordingly, it has been renumbered as TA 64 of 2012.

2. The petitioner was enrolled in the Indian Army on 9-10-1983 and after serving for more than 22 years; he was discharged from service under Rule 13(3) (III) (i) of Army Rules 1954 on completion of terms of service. According to the applicant, during the course of his long service, he was posted at different locations. The applicant has averred in his petition that he suffered the disability of "Blunt Injury Abdomen with abdominal wall sinuses". At the time of discharge, the applicant was placed before the Release Medical Board which held that the applicant was suffering from "primary hypertension" which was assessed at 30% for life but it was opined that the said disability was not attributable to, nor aggravated by military service. After discharge, the applicant was paid the due service pension and other retirement benefits. However, the applicant made a prayer to grant him disability pension since according to him he suffered the ibid disability during the course of military service and therefore, it should be treated as attributable to and aggravated by his service conditions and hence, he was entitled to disability pension as per rules. However, his claim was rejected by PCDA (P), Allahabad. Being aggrieved, he preferred an appeal which was also rejected. Thereafter, the applicant filed a second appeal which also stood rejected with reasons by the appropriate authority. The applicant being dissatisfied with such decisions rejecting his prayer for disability pension filed

the instant Writ Petition praying for grant of disability pension in his favour from the date of his discharge after quashing the appellate orders rejecting his prayer.

3. The application has been contested by the respondents by filing a Written Reply/counter affidavit. It is stated therein that the applicant was enrolled on 19-10-1983 and was discharged on 31-10-2005 as Naik on completion of his service limit under Rule 13(3) (III) (i) of Army Rules. He rendered a total of 22 years and 13 days of service. At the time of discharge, he was placed before the Release Medical Board which categorized him as S1, H1, A1, and P2 (Permanent) E1 on account of "Primary Hypertension". The degree of his disability was assessed as 30% for life. The Release Medical Board was held on 30-5-2001 at Military Hospital, Meerut. The Medical Board however, was of the opinion that the disease with which the applicant was suffering was 'endogenous disorder' and not connected with service. Accordingly, the applicant's prayer for disability pension was rejected by PCDA, Allahabad on 27-6-2006, which was communicated to the applicant on 10-7-2006. The applicant submitted an appeal on 6-2-2007 which was rejected by the Appellate Committee on First Appeal on 27-9-2007. The applicant further preferred a second appeal on 4-4-2008 which was considered afresh by the Defence Minister's Appellate Committee on Pension and the same was rejected by an order dated 10-7-2009 as it was held the disability neither attributable to nor aggravated to service and the said rejection order was communicated to the applicant. According to the respondents, since as per Regulation 173 of Pension Regulations for the Army 1961, Part I, the applicant did not fulfill the conditions laid down therein, he was not entitled to get disability pension.

4. The applicant has filed a rejoinder wherein he has reiterated his contentions that his disability was attributable to military service because such disease arose during the course of his service which was not there at the time of enrolment.

5. The respondents have also filed a Supplementary Affidavit wherein they have relied on some decisions of the Hon'ble Apex Court and High Court to contend that opinion of the Medical Boards, consisting of Experts cannot be called in question. Since the Medical Boards has opined that the ibid disease was not attributable to military service, the applicant is not entitled to any disability pension.

6. We have heard Ms Maitrayee Trivedi Dasgupta, the learned counsel for the applicant and Mr. Souvik Nandy, the learned counsel for the respondents.

7. Ms Trivedi Dasgupta, the learned counsel for the applicant has mainly contended that when the applicant entered into service, no note was made by the Medical Authority which examined him at that time that he was suffering from such disease. It is only during the course of his service that the disease had developed and therefore it has to be held that the same is attributable to military service. She has referred to a decision of the Principal Bench of the Armed Forces Tribunal in TA 208/2010 decided on 1-10-2010 **(Krishna Singh vs. Union of India & Others) reported in 2011(1) AFTLJ 363.** In that case, it was held by the Principal Bench of this Tribunal that taking into consideration paras 4 (c), 9 and 14 of Appendix II to the Pension Regulations for the Army, 1961 (Entitlement Rules) and in view of an earlier judgement of the Principal Bench in TA No.48/2009 it was incumbent on the Medical Authority to give reasons as to why the disease could not be detected at the time of entry. In the absence of any justified reason on the part of the Medical Authorities, it is reasonable to presume that the disease has arisen and was aggravated by military service. Ms Trivedi Dasgupta has further contended that in the present case also there was no note about the disease with which the applicant was suffering and the Medical Board also did not record any reason as to why such disease could not be detected earlier. According to the ld. counsel, the applicant's ibid disease has arisen due to stress and strain of the military service and hence, the applicant is entitled to disability pension. In elaborating her argument, she has contended that due to his postings at

different far off places he could not give proper company to his family and ailing wife, which caused enormous mental pressure on him. She has also placed reliance on a recent decision in **Veer Pal Singh's** case (AIR 2013 SC 2827) to contend that the Medical Board's decision is not immune from judicial review, and therefore, this Tribunal is competent to reconsider such medical opinion.

8. Per contra, Mr Nandy, the learned Counsel for the respondent has submitted that in this case the applicant was working in the trade of Tailor and he was always posted in peace stations and in sedentary job. He was never posted in Field areas and therefore, the question of stress and strain does not arise. He has referred to regulation 48 of Pension Regulations for the Army and also rule 14(b) of Entitlement Rules in support of his case.

9. However, Mr. Nandy has also submitted that 'primary hypertension" is a constitutional disease and normally such disease develops in most cases at advanced age. Therefore, it was not possible for the Medical Board to detect the disease at the time of entry because at that point of time the applicant was very young, aged about 18/19 years. He mainly relied on **Rajpal Singh's** case (2009(1) SCC 216) apart from referring to the following decisions of the Hon'ble Apex Court in his Supplementary Affidavit which are as under:

1) Secretary, Ministry of Defence vs Damodaran A.V. (C.A. No.5678 of 2009) decided on 20-8-2009
2) Union of India vs Baljit Singh (CA No.13272 of 1996) decided on 11-10-1996
3) Union of India vs. Sreekumar P (W.A. No.1071 of 1997) decided on 23-6-1999

10. We have considered the rival contentions carefully. We have also gone through the original Medical Board proceedings which have been produced before us. In this case the facts are not much in dispute. It is admitted that the applicant was enrolled in the Army on 19-10-1983 and was discharged on 31-10-2005 on completion of his terms and condition of service under Rule 13(3) (III) (i) of Army Rules from the rank of Naik. At the time of discharge, he was

placed before a Release Medical Board, which found that the applicant had been suffering from the disease of "Primary Hypertension" which had its onset in the year 1997. The extent of disability of the applicant was assessed at 30% for life. According to the applicant, since the disease had arisen during the course of service, it should be held to be attributable to service particularly when no note was made at the time of his enrolment in his record and he should accordingly be given disability pension apart from the service pension which has been granted to him.

11. We find that the applicant in Para 8 of his application has averred that he had suffered the disease of "Blunt Injury Abdomen with abdominal wall sinuses" and "essential hypertension". However there is no document in support of such disease being suffered by the applicant. The Medical Board has held that he was suffering only from "Primary Hypertension". We also find no mention of such disease as "Blunt Injury Abdomen with abdominal wall sinuses" entered in his personal dossier which has been produced before us. Rather, we find that the applicant had suffered the disease of primary hypertension with simple obesity in the year 1997 when his medical category was downgraded.

12. The applicant has placed much reliance on a communication dated 25-4-2006 (Annexure 3). However, we find that this was in respect of one Havildar Ishwar Singh and not of the applicant. It is mentioned in this annexure that the Ishwar Singh was suffering from the disease Blunt Injury Abdomen with abdominal wall sinuses, which was held to be attributable to military service by the Appeal medical board. However, we do not find any evidence to co-relate this particular annexure with the case of the applicant. In the case before us, although the applicant has averred in his application that he was suffering from the ibid disease, but as already indicated above, there is no document in its support. The learned counsel for the applicant has also not been able to throw any light on this aspect and has very fairly submitted that she cannot improve the position what has been averred in the application because this was filed before the Hon'ble High Court and it is a transferred brief.

13. Now, the only contention that has been raised by the learned counsel for the applicant by relying on Rule 14(b) of Entitlement Rules is that no note was made in the medical examination report which was conducted at the time of entry of the applicant in Army service. Therefore, the Release Medical Board which had examined the applicant at the time of his discharge from service was duty bound to give reason as to why the disease could not be detected at the time of enrolment and in support of such submission, she has placed reliance of Krishna Singh's case (supra). We, however, find that in Krishna Singh's case (supra), it is true that as per Entitlement Rules the Medical Board is required to give reason, in the event no note was made at the time of initial medical examination as to why such disease could not be detected at that point of time. However, the learned counsel for the respondents has submitted that it is clearly stipulated in Para 43 of the Guide to Medical Officers (Military Pension) 2002 that hypertension may be aggravated while serving in field areas or High Altitude areas or counter insurgency areas. Mr. Nandy has categorically submitted that the onset of the disease was in May 1997 when the applicant was posted in Ferozepur which is a peace station. He further stated that all along the applicant was posted in peace areas and therefore it is not correct that he had to pass through stress and strain in field areas or counter insurgency areas. We agree with the submission of the learned counsel for the respondents. From annexure-R1 we find that the places where the applicant was posted during his service have been indicated and all these areas fall within peace stations. We also find that the Commanding Officer has also not recommended that the disability of the applicant was attributable to or aggravated by military service.

14. In view of the discussions made above, we are of the view that the RMB has rightly held that the disability of Primary Hypertension with which the applicant was suffering, was neither attributable to nor aggravated by military service. We also tend to agree with the view of the ld. adv. for the respondents that the ibid disease normally develops at advanced age and it is generally constitutional in nature. Therefore, only because no reason was recorded by

the RMB as to why such disease could not be detected at the time of enrolment, the applicant cannot take advantage of the same and claim that ibid disease ought to be held as attributable to or aggravated by military service.

15. On a consideration of the facts and circumstances of the case we are of the opinion that there is no good reason for this Tribunal to interfere with the decision of the Medical Board and take a different view as we find no illegality or infirmity in the decision so taken by the medical board.

16. In the result the application deserves to be dismissed being devoid of any merit. Accordingly, TA 64 of 2012 stands dismissed on contest but without any costs.

17. Let the records be returned to the respondents on proper receipt.

18. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.

(LT. GEN. K.P.D.SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)