

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 252 of 2018

Tuesday, this the 2nd day of April, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

R.A. Khan (JC-693068H Ex Sub)
Son of Late M.K. Khan
Resident of C-46 Abrar Nagar
Kalyanpur,
Lucknow – 226022 (UP)

.....Applicant

Ld. Counsel for : **Shri R. Chandra,**
the Applicant **Advocate**

Versus

1. Union of India, through the Secretary,
Ministry of Defence, Government of India
New Delhi-11.
2. Chief of the Army Staff,
Integrated Headquarters of Ministry of Defence (Army)
DHQ Post Office, New Delhi – 11.
3. The Officer In-charge
Army Medical Corps Records
Lucknow – 226022 (UP)
4. The Chief Controller Defense Accounts,
Draupadi Ghat,
Allahabad – 14 (UP)

.....Respondents

Ld. Counsel for the : **Shri Adesh Kumar Gupta,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(I) The Hon’ble Tribunal may be pleased to set aside the orders dated 31/01/2018 (Annexure No A-1).*
- “(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01/02/2008 along with its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.*
- “(III) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 24.11.1980 in medically fit condition and discharged from service on completion of the terms of engagement on 01.12.2008 (FN) in low medical category under Army Rule 13 (3) (I) (i) (a) after serving more than 28 years of service. The Release Medical Board held before retirement, considered the disability “PRIMARY HYPERTENSION” as neither attributable to nor aggravated by military service and assessed it @ 30% for life. The claim of the applicant for grant of disability pension was rejected by the competent authority vide order dated 24.05.2009 and the applicant was advised to prefer appeal within six months if he was not satisfied with the decision of the competent authority but no appeal was preferred by the applicant

within the stipulated period. Thereafter the applicant preferred an application dated 04.01.2018 for grant of disability pension and he was replied about the rejection of disability pension vide letter dated 31.01.2018. Aggrieved by the denial of disability pension, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter he has retired from service in Low Medical Category therefore his disability '**PRIMARY HYPERTENSION**' should be considered as aggravated by military service. Learned counsel for the applicant placed reliance on the judgment of Hon'ble Apex Court in the case of *Dharamvir Singh vs. Union of India & others*, 2013 AIR SCW 4236 and *Sukhvinder Singh vs. Union of India & Others* reported in (2014) 14 SCC 364 and submitted that the applicant is entitled for disability pension. He pleaded for disability pension for the applicant @ 30% for life for his disability '**PRIMARY HYPERTENSION**' which should be rounded off to 50% for life in terms of Government letter dated 31.01.2001.

4. The learned counsel for the respondents have not disputed that the applicant has suffered disability to the extent of 30% for life, but submitted that the RMB has opined the disability of the applicant '**PRIMARY HYPERTENSION**', assessed @ 30% for life to be NANA. Therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for grant of disability pension has correctly been rejected.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). In this case the Apex 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)]. [pic]

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)."

7. Perusal of report of RMB shows that the onset of the disability was in August 2008 and the applicant's category prior to that was Shape-1. So the disease started after the applicant rendered 27 years of service in Shape-1. It is also clear from the report that negligence of the applicant was not the cause of this disease. We have also noted that RMB has given one line cryptic statement to deny attributability of the disease to military service i.e. "Not AFFECTED BY MILITARY SERVICE". We don't find this cryptic one line statement good enough to deny attributability/aggravation to the applicant.

8. Thus considering all issues and the law settled on this matter vide Hon'ble Apex Court decision in the case of *Dharamvir Singh* (Supra), we are of the considered opinion that the benefit of doubt should be given to the applicant in view of the commencement of disease due to stress and strain of service. Therefore, we consider the disease of the applicant i.e. "PRIMARY HYPERTENSION" as aggravated by military service and the applicant is considered entitled for grant of disability pension @ 30% for life for his disability 'PRIMARY HYPERTENSION'.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of *K.J.S.*

Buttar vs. Union of India and Others, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar** and *Union of India vs. Ram Avtar & Others*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 30% for life which would stand rounded off to 50% for life from the date of discharge i.e. 01.12.2008. However, due to law of limitations, the arrears of disability element will be restricted to three years prior to filing of the Original Application. The date of filing of Original Application is 05.03.2018. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

12. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: April, 2019

SB

(Justice SVS Rathore)
Member (J)