

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 141 of 2019

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)"

Ex No. 10182350 H Ex Havildar Rajendra Singh, son of Shri Sri Chandra resident of village-Ibrahimpur, Adarsh Nagar, Post-Nilmatha, District-Lucknow (UP), PIN-226002.
.....Applicant

Ld. Counsel : **Col (Retd) Rakesh Johri**, Advocate.
for the Applicant

Versus

1. Union of India through The secretary, Ministry of Defence, New Delhi-110001.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi-110001.
3. Adjutant General, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi-110001.
4. Officer-in-Charge, Records THE KUMAON Regiment, PIN-900473, C/O 56 APO.
5. Principal Controller General of Defence Accounts Pensions, Draupadi Ghat, Allahabad-211014.

.....Respondents

Ld. Counsel for the
Respondents.

:**Shri Shyam Singh**,
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

(i) to issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in Records The KUMAON Regiment letter No 10182350/DP dated 01.10.2014 and letter of even No dated 21.01.2015 (Annexure A-1).

(ii) to issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in Additional Directorate General of Personal Services. Adjutant General’s Branch, IHQ of MoD (Army), New Delhi letter No B/40502/251/2015/AG/PS-4 (Imp-II) dated 26.07.2017 and Records the KUMAON Regiment letter No 10182350/DP dated 23.08.2017 rejecting the First Appeal (Annexure A-2).

(iii) issue/pass an order or direction to the respondents to grant 50% disability pension to the applicant as assessed by the Release Medical Board (RMB).

(iv) issue/pass an order or direction to the respondents to issue a corrigendum to Pension Payment Order for grant of disability pension.

(v) Allow this application with cost.

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 10 month and 06 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 26.03.2019.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 05.08.1993 and was discharged from service with effect from 22.08.2013

before completion of terms of engagement in low medical category "S1H1A1P2(P)E1" for the disabilities (i) 'Dyslipidemia' and (ii) 'Lt MCA Ischemic Stroke' after rendering 20 years and 17 days of service. Release Medical Board (RMB) held on 10.07.2013 at Military Hospital, Allahabad considered the first disability @ 1-5% and the second disability @ 50% for life (composite disability element for both the disabilities @ 50% for life) neither attributable to nor aggravated by military service (NANA). His claim for grant of disability pension was rejected by the PCDA (P), Allahabad being disabilities as NANA. Intimation to this effect was given to the applicant vide letter dated 21.01.2015. Thereafter, the applicant's first appeal against rejection of his disability pension claim was rejected vide order dated 26.07.2017 on the ground that the onset of the disease was in peace area and not connected with military service. The second appeal submitted by the applicant on 12.12.2017 seems to be pending till date. Feeling aggrieved, the applicant has filed this Original Application.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment. He has picked up these disabilities due to stress and strain of

service. He drew our attention to page 5 of the RMB endorsing with the following remarks:-

"2. Did the disability exist before entering service? –No.

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry?-No."

5. Further submission of Ld. Counsel for the applicant is that out of 20 years of service the applicant has put in 11 years of service in Counter Insurgency Operational Area (CI Ops Area). His unit moved to Allahabad in the year 2011 where on 02.09.2011 the applicant while taking part in collective Battle Physical Efficiency Test (BPET) fell down and became unconscious which resulted in his hospitalization and later it was revealed that the applicant was suffering from the aforesaid disabilities. The Ld. Counsel further stressed that the disabilities though detected in peace area have its origin in operational areas and it is a cumulative effect of various factors beyond the control of the applicant. Since the applicant had fallen during BPET and was evacuated from Training Area to Military Hospital on 02.09.2011, there is a causal connection with the service and the invaliding disease.

6. Ld. Counsel for the applicant further pleaded that the applicant was in a fit medical condition, as such, his disabilities should be considered as aggravated by military

service and disability pension should be granted to the applicant in consonance with the provisions of Regulation 423 (c) of Regulations for Medical Services of the Armed Forces 1983. Ld. Counsel for the applicant further submitted that the disabilities had taken place in the year 2011 (by this time the applicant had completed 18 years of service) while the applicant was posted in J&K (Field Area). It escalated gradually by the passage of time but was detected first time while he was posted at Allahabad during September 2011. Ld. Counsel further pleaded that though the applicant was assessed as 50% disablement for 'Lt MCA Ischemic Stroke' vide Release Medical Board held on 10.07.2013 but however viewed applicant's disability as neither attributable to nor aggravated by military service (NANA) and degree of disablement for disability pension was assessed at Nil for life. He placed reliance on the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, (2013) 7 SCC 316 and ***Union of India and Ors vs Ram Avtar & Ors*** (Civil Appeal No. 418 of 2012 dated 10th December 2014) and pleaded that the case is squarely covered under above judgments and thus the applicant is entitled to grant of disability pension.

7. In this case though the respondents have not filed a counter affidavit as yet, however based on medical records, Ld. Counsel for the respondents while filing objection has submitted that the RMB has declared the applicant's both disabilities as NANA therefore he is not entitled to disability pension. The Ld. Counsel has orally submitted that the ground of rejection of first appeal is primarily related to the onset of the disease being at a peace station and not related to a field or high altitude or counter insurgency operations area. He pleaded the O.A. to be dismissed.

8. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the Release Medical Board (RMB) and the rejection order of first appeal. The question before us is simple and straight forward i.e. – is the disability of applicant attributable to or aggravated by military service?

9. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors*** reported in (2013) 7 Supreme Court Cases 316. 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)."

10. In view of the settled position of law on attributability we find that the Medical Board has denied attributability to

the applicant on the ground that the onset of disease after 18 years of service was at a peace station and not at a field or high altitude or counter insurgency related station. We have also noted that the disease was first detected on 02 September 2011 and the applicant was in field area/high altitude area in J&K upto February 2011. Additionally close to 50% of the entire service of the applicant has been in field area and thus a major portion of his diet has been as provided by military messes. We therefore are of considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316 and the second disability of the applicant i.e. 'LT MCA Ischemic Stroke' should be considered as aggravated by military service.

11. In view of the above the applicant is held entitled to 50% disability element for life with effect from the date of discharge. The applicant is already in receipt of service pension. Additionally, the applicant is also entitled to the benefit of rounding off in terms of the law settled by the Hon'ble Apex Court in the case of ***Union of India & Ors vs Ram Avtar***. Hence the applicant's disability will stand rounded off from 50% for life to 75% for life.

12. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be entitled to disability element @ 50% for life rounded off to 75% for life with effect from the date of discharge. However due to law of limitations the arrears of disability element are restricted to three years prior to filing of the present O.A. The date of filing of present application is 03.10.2017. The respondents are 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: April, 2019
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(Justice S.V.S. Rathore)
Member (J)