

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 200 of 2019

Tuesday, this the 2nd day of April, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 14540813X Ex Hav Rajesh Kumar S/O Late Anand Ram, R/O Village & Post-Rohila, Tehsil-Sadar, District-Farrukhabad (U.P.), Pin-206451.

..... Applicant

Ld. Counsel for the : **Shri Bachchan Singh**, Advocate.
Applicant

Versus

1. Union of India, through Secretary to the Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), Sena Bhawan, New Delhi-110011.
3. Commandant-cum-Officer-in-Charge, EME Records, PIN-900453, C/O 56 APO.
4. P.C.D.A. (Pensions), Draupadi Ghat, Allahabad, Pin-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Yogesh Kesarwani**,
Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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

- (i) *This Hon’ble Tribunal may graciously be pleased to quash the order dated 14.06.2007 of respondent No 3 (Annexure No A-1) rejecting the disability pension to the applicant.*
- (ii) *The rejection order of the Appellate Committee on First Appeal dated 24 Apr 2008 made by the Respondent No 2 and also order dated 26 May 2008 of respondent No 3 Communicating the order of the Respondent No 2 (Annexure No A-7 and A-8) may graciously also be quashed as illegal.*
- (iii) *This Hon’ble Tribunal may also be gracious to applicant and reject the order dated 19 May 2018 of the Respondent No 3 rejecting the second appeal of the applicant on the ground of policy letter of Respondent No 2 dated 19 May, 2016 (Annexure No A-9) that it was barred by time and could not be considered is highly prejudicial to the applicant.*
- (iv) *This Hon’ble Tribunal may graciously be pleased to order and direct the respondents to grant disability pension @ 40% for life with rounding off of the same @ 50% for life from the date of discharge from service of the applicant.*
- (v) *This Hon’ble Tribunal may graciously be pleased to pass such other order and direction to the respondents as deem fit, just, proper, necessary and in the circumstances of the case, in favour of the applicant.*
- (vi) *Award costs to the applicant and against the respondents.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 09 years, 11 months and 29 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order 01.03.2019.

3. Brief facts of the case are that the applicant was enrolled in the Army in medically fit condition on 06.01.1981 and was discharged from service w.e.f. 31.01.2007 after completion of terms of engagement. On 04.05.2005 the applicant was brought to unit MI Room from where he was referred to Military Hospital (MH), Namkum. The medical authorities downgraded his medical category to S1H1A1P3(T-24)E1 w.e.f. 29.09.2005 for disability 'CAD (IPWMI) STK, SVD POST PTCA+STENT LCX (N) LV FUNCTION'. He was due for re-categorization medical board after six months but owing to his retirement on 31.01.2007 he was brought before Release Medical Board (RMB) on 01.09.2006 at Military Hospital, Meerut. The RMB assessed his disability @ 40% for life neither attributable to nor aggravated by military service (NANA). It is submitted that correspondence related to rejection of disability pension claim has not been placed on record. First appeal preferred by the applicant was rejected vide order dated 24.04.2008 and thereafter second appeal was rejected on the ground of limitation as it was filed beyond the prescribed time period. Hence this O.A.

4. Ld. Counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and he has

been discharged in Low Medical Category (LMC), as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. The Ld. Counsel further submitted that after retirement from service applicant's condition had further deteriorated and he was admitted in MH, Fatehgarh on 09.09.2007 for treatment where he remained admitted up to 17.09.2007. Presently the applicant is getting regular treatment/medicines through ECHS polyclinic. He pleaded for grant of disability pension to the applicant.

5. On the other hand, the respondents have not disputed that the applicant suffered disability to the extent of 40% for life, but submitted that the disability "CAD (IPWMI) STK, SVD POST PTCA+STENT LCX (N) LV FUNCTION" was considered as neither attributable to nor aggravated by military service (NANA) by the RMB, as such, the applicant is not entitled to disability pension. He further submitted that in terms of Para 173 of Pension Regulations for the Army, the applicant's claim has correctly been rejected. The Ld. Counsel pleaded for dismissal of this O.A.

6. We have heard Shri Bachchan Singh, Ld. Counsel for the applicant and Shri Yogesh Kesarwani, Ld. Counsel for the respondents and perused the material placed on record.

7. The law on the point of attributability/aggravation of the disability is no more RES INTEGRA. On the question of attributability of disability to military service, we would like to refer to the judgment and order of Hon'ble the Apex Court in the case of **Dharamvir Singh vs Union of India & Ors** reported in (2013) 7 SCC 316. The relevant portion of the aforesaid judgment, for convenience sake, is reproduced as under:-

"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)."*

8. We have perused the RMB in detail. The disease has started after about 24 years of Army service and has been declared as NANA by the RMB. However, the reason for declaring the disease as NANA as given by the RMB is very cryptic and non convincing i.e. 'constitutional disease'. Thus this cryptic line does not adequately explain the denial of attributability/aggravation. On the other hand we find that in Part III, Para 12 of RMB the Commanding Officer has opined that the applicant's disability should be made attributable due to stress of military service. We are, therefore, of the considered opinion that benefit of doubt must go to the applicant. Therefore, in terms of judgment of Hon'ble Apex Court in the case of **Dharamvir Singh vs. Union of India and Others**, reported in (2013) 7 SCC 316, **Sukhvinder Singh vs. Union of India and Others**, reported in (2014) 14 SCC 364, **Union of India and others vs. Angad Singh Titaria**, reported

in (2015) 12 SCC 257 and **Union of India and Others** vs. **Rajbir Singh**, reported in (2015) 12 SCC 264, we are of the opinion that disease 'CAD (IPWMI) STK, SVD POST PTCA+STENT LCX (N) LV FUNCTION' of the applicant is to be considered as aggravated by military service.

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, Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC and **Union of India** vs. **Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. It is well settled well settled position of law that the claim for pension is based on continuing wrong and the relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the law settled by the Hon'ble Apex Court is that if a petition for pension (disability pension in this case) is filed beyond a

reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

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

12. 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 @ 40% for life which would stand rounded off to 50% for life w.e.f. from date of discharge. However, due to law of limitations, the arrears of disability element shall be restricted to three years prior to the filing of the present Original Application. This O.A. was filed on 11.09.2018. 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.

No order as to cost.

**(Air Marshall BBP Sinha
Member (A))**

Dated: April, 2019

gsr

**(Justice SVS Rathore)
Member (J)**

