

Reserved
Court No.1

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

Original Application No. 238 of 2019

Wednesday, this the 03rd day of April, 2019

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

No. 14470683-A L/Nk Awadhesh Kumar Pandey GD (Retd),
S/o Shri (Late) Ram Jivan Pandey, R/o : House No. 357/157,
Rukundipur "C" Block, Rajajipuram, District Lucknow (UP)-
226017

.....Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi- 110011.
3. OIC Records, DSC Records, PIN : 901277, C/O 56 APO
4. PCDA (Pension), Draupadi Ghat, Allahabad (UP) - 211014.

.....Respondents

Ld. Counsel for the : **Shri VPS Vats, Advocate**
Respondents

ORDER

“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”

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

- “A. To quash the impugned orders dated 20 Dec 2011 (A-1 of instant OA) and dated 24 Jul 2011 (To be

summoned) (A-2 of instant OA) wherein claim of the applicant has been denied for grant of disability pension by Respondent No.3.

- B. To issue suitable orders or directions to the Respondents for grant of disability pension and rounding off benefit of his disability 30% to 50% from the date of discharge (01.06.2011) in terms of Govt of India letter dated 31 Jan 2001 along with Hon'ble Apex Court Judgments (Darmveer Singh, Sukhavinder Singh & Ram Avta).
- C. To pay the arrears of said difference of disability pension and rounding of benefits along with suitable rate of interest as deemed fit and proper by the Hon'ble Tribunal.
- D. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant."

2. The brief facts of the case as stated by the applicant are that he was enrolled on 14.11.1980 in Indian Army (Artillery Records) as sepoy in medically fit condition and was discharged from Indian Army as Naik (TS) after rendering 17 years, 16 days of service. He was re-enrolled in Defence Service Corps on 09.05.2001. While serving in Defence Service Corps he was diagnosed as a case of 'HYPERTENSION' and placed in permanent low medical category P₂ (P) w.e.f. 31st August, 2010. Due to permanent low medical category, he was not granted further extension of service beyond initial engagement of 10 years. He was discharged from DSC service on 31.05.2011. His Release Medical Board (RMB) assessed his disability "PRIMARY HYPER TENSION" @ 30% for life but considered it as neither attributable to nor aggravated by military service (NANA).The respondents have denied the grant of disability pension to applicant and informed the same vide letter dated 20.12.2016. Hence feeling aggrieved the applicant has preferred the present O.A.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter he has been discharged in Low Medical Category from army service, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

4. The respondents have not filed any counter affidavit in this case. While rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the applicant was discharged from service in low medical category for “**PRIMARY HYPERTENSION**”, which was considered as neither attributable to nor aggravated by military service. He has also submitted that Para 173 of the Pension Regulations clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. He concluded by stating that this being a NANA case as per the opinion of RMB, hence the claim of applicant for disability pension has rightly been rejected.

5. We have heard Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Shri VPS Vats, Ld. Counsel for the respondents and perused the record. The only issue which needs to be decided by us is as to whether the disability of the applicant is attributable to or aggravated by military service.

6. We have carefully perused the RMB proceeding, which was produced by the respondents during the course of hearing and noticed that the applicant was found suffering from the disability “**PRIMARY HYPERTENSION**”. We have also noted that RMB has opined the disability i.e. “**PRIMARY HYPERTENSION**”, to be NANA primarily because it has originated in a peace station. On perusal of RMB we find that the applicant was for the first time found to be suffering from the

aforesaid disease on 30.09.2009 i.e. after completion of more than 26 years of service, for about 17 years in Indian Army (Artillery Records) and thereafter about 9 years in Defence Service Corps. Therefore the presumption may be drawn that the applicant was not suffering from any disease at the time of his enrolment till 26 years of service. Considering that the reason given by RMB for denying attributability is very cryptic i.e. “Not connected with service” and “originated in Peace Station”, we are of the considered opinion that benefit of doubt must go in favour of applicant because Peace stations have demands of intense military training and other related stress and strain of service. Therefore, in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, we are of the considered opinion that the disability i.e. “**PRIMARY HYPERTENSION**” of applicant is aggravated by military service.

7. 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). Hence we are of the opinion that the applicant is eligible for the benefit of rounding off.

8. It is well settled 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.

9. In view of the above the Original Application deserves to be partly allowed. Accordingly the O.A. is **partly 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 three years prior to the filing of the present Original Application i.e. 06.04.2018. 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 Marshal BBP Sinha)
Member (A)

Dated: April , 2019

JPT

(Justice SVS Rathore)
Member (J)