

RESERVED
Court No.1

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

Original Application No. 244 of 2019

Wednesday, this the 3rd day of April 2019

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

No. JC-802498-L Ex Subedar Prem Prakash, S/O Late Shri Bhimsen, resident of H.No. 9, Sector-15B, Awas Vikas Colony, Sikandra, Agra, PIN-282007, U.P., India.

.....Applicant

Ld. Counsel for: **Shri Manoj Kumar Awasthi**, Advocate
the Applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi.
3. Sena Shiksha Corps Abhilekh Karyalaya, Army Educational Corps Records, PIN-908777, C/O 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Mrs Anju Singh**,
Respondents Central Govt Counsel.

ORDER

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

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:-

- (a) *To issue/pass an order or directions to set aside/quash the letter dated 26.09.2009, rejection of First Appeal vide letter dated 13.06.2014 and rejection of Second Appeal vide letter dated 07.07.2015, which is attached as Annexure No A-1, A-2 and A-3 respectively.*
- (b) *To issue/pass an order or directions to the respondents for grant of disability element of disability pension from the date of discharge i.e. 31.07.2008.*
- (c) *To issue/pass an order or directions to rounding off the disability pension of the applicant @ 30% to 50% along with 12% interest of the arrears from the date of discharge i.e. 31.07.2008.*
- (d) *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (e) *To allow this original application with costs.*

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 02 years, 07 months and 11 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 29.03.2019.

3. Brief facts of the case giving rise to the instant original application are that the applicant was enrolled in the Indian Army (Army Educational Corps) on 13.03.1982 and was discharged from service after rendering more than 26 years

of service on 31.07.2008 in low medical category 'S1H1A1P2E1' due to disability 'PRIMARY HYPERTENSION (ICD No 1-10)'. His disability was assessed @ 30% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 26.09.2009. Thereafter first and second appeals submitted against rejection of disability pension claim were rejected vide orders dated 13.06.2014 and 07.07.2015 respectively on the ground that the onset of ID was at a peace station. It is in this perspective that the present O.A. has been filed by the applicant.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and asserted that after having served for more than 24 years, he was found to be suffering from Primary Hypertension in the year 2006 while serving at Modified Field Area (Lalgarh Jattan). The applicant's medical category was downgraded to P2 (permt) and till retirement he served in low medical category. The Ld. Counsel for the applicant asserted that the applicant has picked up this disability due to stress and strain of military service. Ld. Counsel for the applicant further submitted that prevailing service conditions in the military units are very demanding and put similar stress as that of field posting. Relying upon the Hon'ble Apex Court judgment in

the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316, Ld. Counsel for the applicant vehemently argued that the disability of the applicant is principally due to stress and strain of military service. Since the disability was suffered by the applicant at the fag end of his service therefore it should be considered as aggravated by military service.

5. Per contra, Ld. Counsel for the respondents has submitted that the RMB has assessed applicant's disability 'Primary Hypertension (ICD No 1-10)' @ 30% for life neither attributable to nor aggravated by military service (NANA) therefore he is not entitled to disability pension. The Ld. Counsel further submitted that his claim for disability pension has rightly been rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which 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 pleaded the O.A. to be dismissed.

6. Heard learned counsel for the parties and perused the material placed on record.

7. The questions which need to be answered are of two folds :-

(a) Whether the disability of the applicant is attributable to or aggravated by military service?

(b) Whether the applicant is entitled for the benefit of rounding off of his disability pension?

8. 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 & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pension 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)."

9. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing a cryptic sentence that the disability of the applicant is constitutional in nature and that it originated while the applicant was serving in a Modified Field Area, hence not connected with service and is NANA. Moreover, in Release Medical Board Proceedings on page 4 against the question **"Did the disability exist before entering service?"** – **"No"** has been answered which makes it clear that the disability took place after joining military service. The applicant was enrolled in the Army on 13.03.1982 and the disability was first time detected in the year 2006 i.e. after approx twenty four years of military service. Since the applicant has served for 06 tenures in field including 04 tenures in J&K area and because the applicant's disability occurred while serving at a Modified Field Area, therefore we are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant. Hence in view of the law settled by the

Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors*** (supra) we are of the opinion that the the disability of the applicant i.e. Primary Hypertension (ICD 1-10) @ 30% for life should be considered as aggravated by military service.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 dated 10th December 2014) wherein the Hon'ble Apex Court nodded in disapproval of policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who are in low medical category and have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision being relevant is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept

of rounding off of the disability pension are dismissed, with no order as to costs.

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

11. In view of the above, the applicant is entitled to the benefit of rounding off of his disability element from 30% for life to 50% for life w.e.f. his date of discharge i.e. 01.08.2008.

12. Thus, the Original Application deserves to be partly allowed, hence **Partly allowed**. The applicant shall be granted 30% disability element rounded off to 50% disability element for life w.e.f. date of discharge. However, due to law of limitations the arrears of disability element is to be restricted to three years prior to filing of the present O.A. The O.A. was filed on 21.08.2018. The whole exercise shall be completed by the respondents 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 till actual date of payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : April, 2019

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