COURT NO 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 332 of 2017

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. 13993821P Ex Sep (ACP-II) Surendra Yadav, S/O Sh Phool Chandra Yadav, R/O Vill & OI- Dewait, Tehsil-Mehnagar, District-Azamgarh (UP).

…..Applicant

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

Versus

1. Union of India, through its Secretary, Govt of India, Ministry of Defence, New Delhi-110011.

2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, PO-New Delhi-110011.

3. OIC Records, Records, The Army Medical Corps, PIN-900450, C/O 56 APO.

4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....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) To quash/set aside the impugned order dated 02 Jun 2015 passed by the respondent No 2 as Annexure No A-1 with compilation No 1 to this O.A.*
>
> *(ii) Issue an order or direction directing the respondent authorities to grant the disability pension along with arrears and other consequential service benefits.*
>
> *(iii) Issue an appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the demand of justice.*
>
> *(iv) Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicants.*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) in medically and physically fit condition on 29.12.1995 and was discharged from service in low medical category w.e.f. 01.01.2013 (FN) after completion of 17 years and 03 days of service in terms of Rule 13 (3) III (i) of Army Rules, 1954. Release Medical Board (RMB) held on 24.08.2012 at Military Hospital, Meerut assessed applicant's disability 'Seizure Disorder' @ 20% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim in respect of the applicant was rejected by the competent authority and conveyed to the applicant vide letter dated 29.01.2013. Thereafter against rejection of disability pension claim the applicant submitted first appeal but during pendency of the first appeal, the applicant preferred second appeal to the

appellate authority. Subsequently his first appeal was rejected vide order dated 31.03.2014. Since his second appeal was not decided, the applicant filed O.A. No 30 of 2015 in this Tribunal which was disposed vide order dated 18.09.2015 with directions to the respondents to decide applicant's second appeal dated 16.11.2014 within three months. Thereafter the Second Appellate Committee on Pension (SACP) decided his second appeal vide order dated 02.06.2015 with speaking and reasoned order. In the speaking order it was held that the disability is NANA by military service and the applicant is not entitled to disability pension on the ground that the onset of the disease was in peace station. Hence this O.A.

3. Ld. Counsel for the applicant submitted that since the applicant was enrolled in medically fit condition, thereafter 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. Presently the applicant is in receipt of service pension. The Ld. Counsel for the applicant further submitted that the first episode of seizure took place on 17.10.2010 at his village while he was on leave he was trying to extinguish fire and second episode took place on 22.10.2010 i.e. after completion of fifteen years of service. Ld. Counsel for the applicant further pleaded that the applicant was fully fit at the time of enrolment and he has picked up this disease 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."*

4. Ld. Counsel for the applicant further pleaded that since the applicant was in a fit medical condition, as such, his disability should be considered as attributable to and aggravated by military service and disability pension should be granted to the applicant in consonance with the provisions of Regulation 423 of the Pension Regulations for the Army.

5. On the other hand, the respondents have not disputed that the applicant suffered disability to the extent of 20% for life, but submitted that the disability due to the disease of "Seizure Disorder" 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 Vikas Singh Chauhan, 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).*
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> *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)].*
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> *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).*
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> *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]*
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> *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 15 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 non convincing. Thus this cryptic line 'As per para 33 of Chapter-Vi at GTMO-2008' primarily indicates that the disability is NANA as it has originated in peace area and not in a HAA/Field/CI Area. This does not adequately explain the denial of attributability/aggravation. It is known that 'Seizure Disorder' can originate because of various reasons, some of them because of infection or injury to the head. Thus considering all issues denial of attributability merely on the ground that the disease did not originate in a HAA/Field/CI Area but in a peace area amounts to being unfair to the applicant. Peace stations have their own pressures of intense military, training, military exercises and other related stress and strains of military service, which should not be ignored. 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' @ 30% for life 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 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. Although the applicant is entitled to disability pension @ 20% for life which would stand rounded off to 50% for life w.e.f. date of discharge but due to the 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 22.08.2016. 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)

(Justice SVS Rathore)
Member (J)

Dated: April, 2019
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