

Reserved
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**
Original Application No. 59 of 2019

Wednesday, this the 3rd day of April, 2019

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

No 600254 Ex Sub Yadav Singh Sharma, son of Sri Ful Singh Sharma, residence of Defence Colony, Near Gita Gyan Bharti School, Agra Cantt, Agra (UP)-282001

.....Applicant

Ld. Counsel for: **Shri V.P.Pandey**, Advocate
the applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi, 110001
3. Officer-in-Charge, Artillery Records, Nasik Road Camp-422102.
4. The Principal Controller of Defence Account (P), Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Dr Shailendra Sharma Atal**,
Respondents Addl Central Government Counsel.

ORDER

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

1. Aggrieved by denial to grant disability pension, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) To set aside/quash the rejection of disability pension, rejection of first appeal, rejection of second appeal contained in Annexure A-1 (i), A-1 (ii) and A-1 (iii).

(ii) To issue order/ direction to respondent to grant of disability pension to the applicant from the date of his discharge from service w.e.f. 01.09.2007.

(iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the appeal be awarded to the applicant.

2. The only issue involved in this petition revolves around grant of disability pension and its broad banding, which involves recurring cause of action, as such, the delay of 01 year, 03 months and 04 days in preferring the petition has been condoned vide order dated 24.10.2018. Counter and rejoinder affidavits have been filed by the parties.

3. The factual matrix of the case as would be borne out from the pleadings on record is that the applicant was enrolled in Indian Army on 21.06.1994 as Sepoy and was discharged under Rule 13 (3) III (v) of the Army Rules, 1954 on 30.06.2016. The applicant was granted service pension. At the time of discharge,

Release Medical Board (RMB) of the applicant was conducted which assessed the disability suffered by the applicant, i.e. PRIMARY HYPERTENSION (1-10) @ 30%, for life as neither attributable to nor aggravated by military service (NANA). Accordingly, applicant's disability pension was rejected by the pension sanctioning authority and conveyed to the applicant vide letter dated 06.12.2007. First and Second appeals preferred against rejection of Disability pension were rejected vide orders dated 27.02.2009 and 01.04.2010 respectively. Feeling aggrieved, the applicant has preferred the present O.A.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and thereafter he has been discharged in Low Medical Category S1H1A1P2(P)E1, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

5. Learned counsel for the respondents in rebuttal to arguments of learned counsel for the applicant submitted that the disability suffered by the applicant has been opined by the RMB to be "neither attributable to nor aggravated" by military service and not

connected with military service. Thus, in terms of Para 173 of Pension Regulations, his claim for disability pension has correctly been rejected.

6. We have heard Ld. counsel for the applicant and Ld. counsel for the respondents and perused the record. The only question which needs to be decided by us is as to whether the disability of the applicant is attributable to or aggravated by military service.

7. We have carefully perused the RMB proceedings and noticed that the applicant was first found to be suffering from PRIMARY HYPERTENSION (1-10) w.e.f. 09.06.2006 i.e. after putting in 26 years of service. We have also noted that the RMB has given a very cryptic statement for declaring the disability as NANA i.e. "unrelated to military service" and "originated in peace area". Therefore, it may be safely presumed that the applicant was not suffering from any disease at the time of his enrolment till 26 years of his service. We feel that the reason given by the RMB for denying attributability is very cryptic, i.e. "unrelated to military service" and "originated in peace area", and does not reflect the complete truth. We feel that even peace tenures of soldiers have their own fair share of stress and strain of military service, therefore, the

applicant deserves to be given benefit of doubt in line with the law settled on this issue by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316, ***Sukhvinder Singh vs. Union of India & ors*** reported in (2014) 14 SCC 364, ***Union of India & ors vs Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India & ors vs. Rajbir Sing***, reported in (2015) 12 SCC 264. In view of the above, we are of the considered opinion that the disability "PRIMARY HYPERTENSION (1-10) @ 30% for life, of the applicant is aggravated by military service.

8. 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) and the applicant is entitled to the benefit of rounding off of disability pension.

9. Accordingly the O.A. is **partly allowed**. The impugned order passed by the respondents is set aside. Although the applicant is held entitled to disability element @ 30% for life which would stand rounded off to 50% for life from the date of discharge, i.e. 01.09.2007 but due to law of limitations the arrears of disability element shall be restricted to three years prior to filing of the present O.A. This O.A. was filed on 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 failing which the respondents 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)

(Justice SVS Rathore)
Member (J)

Dated : April, 2019

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