

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No.600 of 2017

Tuesday, this the 02nd day of April 2019

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

Hon'ble Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Ex Rect No. 15235146H Sunil Tewari (Arty Recd),
S/o Shri Bhuneshwar Tewari,
R/o (now) Shri VS Dwivedi, 5/71 LIG, Awas Vikas Colony,
Jhansi, Allahabad (UP) 211019.

.....Applicant

Ld. Counsel for :
the Applicant

Shri Virat Anand Singh,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi 110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army),
DHQ, PO New Delhi 110011.
3. Officer of DGAFMS, Ministry of Defence,
Pin 908713, C/o 56 APO.
4. Topkhana Abhilekh, Artillery Records, PIN 908802,
C/o 56 APO.

.....Respondents

Ld. Counsel for the :
Respondents

Shri Bhanu Pratap Singh,
Ld. Counsel for the Respondents.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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

“(i) To set aside and quash the finding of First Appellate Forum Dte 28 June 2016 and Second Appellate Forum (copy not in custody) against applicants claim for Disability Pension in light of Hon’ble Apex Court findings.

(ii) To direct respondents to grant Disability Pension to applicant retrospectively.

(iii) To direct respondents to round-off the Disability pension (20% to 50% of the applicant as per rounding-off policy.

(iv) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(v) Allow this application with cost.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army in Artillery as Gunner on 01.02.2013 in medically and physically fit condition and went to Artillery Centre, Nasik Road for training. The applicant completed his basic training successfully. After completion of his training, he felt uncomfortable and reported to MI room. After initial check up, he was sent to MH Devlali on 10th October 2013. From MH Devlali, he was referred to Command Hospital, Central Command on 22nd October 2013. The applicant was under treatment in the Command Hospital till 04th November 2013. The IMB opined the applicant to be suffering from **PORTAL HYPERTENSION (PORTAL CAVERNOMA)** @20% for Life. The Medical authorities recommended the applicant to be invalided out of service. The applicant’s Invalid Medical Board was conducted on 15th January 2014 and he was invalided out of service under Item No.(IV) of Rule 13(3) of Army Rule, 1954 on 15.01.2014 after about 11 months and 14 days of service and his disability was assessed as 20% for Life. However, the claim of disability pension of the applicant has been rejected by the competent authority. First

and Second Appeals filed by the applicant have also been rejected by the Appellate Authorities.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and has been discharged from service in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He further submitted that the disease **PORTAL HYPERTENSION (PORTAL CAVERNOMA)** as aggravated by Military service. However, the same has been unfortunately overruled by higher formation i.e. the competent authority. He pleaded for grant of disability pension to the applicant.

5. The respondents have relied upon the opinion of classified specialist of Command Hospital, Pune dated 31.10.2013, in which it has been mentioned that on evaluation the applicant was found to have pancytopenia with splenomegaly. His fever work up including RTD for malaria and dengue were negative. His fever resolved with medical management. The applicant is a case of portal hypertension with portal cavernoma.

6. We have heard the parties and perused the IMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service.

7. On careful scrutiny of the IMB, we find that the IMB had opined that the diseases i.e. **PORTAL HYPERTENSION (PORTAL CAVERNOMA)** is aggravated by Military service and have assessed the disability as 20% for Life. However, the IMB has also opined that the disease could not be detected during enrolment. It is this second remark of IMB which has been interpreted by the competent authority to deny disability pension to the applicant despite IMB having conceded the disease to be aggravated by Military service.

8. Thus, the only question before us is straight and simple i.e. is the disease aggravated by Military service or because it pre existed at the time of enrolment, it is not to be conceded as aggravated.

9. In this context, we have given our anxious considerations to the contention of both the parties and the IMB records. After considering all issues, we are of the considered opinion that the disease of the applicant i.e. **PORTAL HYPERTSNION (PORTAL CAVERNOMA)** is to be considered as aggravated by Military service due to the following reasons :

(a) IMB in Part V of IMB has opined in a contradictory manner i.e. on one hand it has conceded the disease as aggravated by military service and on the other hand also commented on the disease as a “Condition which could not be detected during enrolment”, implying that the disease pre existed before enrolment.

(b) However, to a question in Para 2 of Part V of IMB i.e. “Did the disability exist before entering service?” The IMB was required to answer with any of those three options i.e. Yes/No/Could be. To our surprise, we find that IMB has replied the above question as “Could be”, thereby creating a doubt again as to whether the disease pre existed before enrolment or not.

(c) Thus, we find that, on the issue of pre existence of disease before enrolment, there is a contradiction in the opinion of the IMB, hence we have no option but to give benefit of doubt to the applicant as per law settled by the Hon’ble Supreme Court in the case of *Dharamvir Singh vs. Union of India & others*, 2013 AIR SCW 4236 and declare the disability of the applicant as Aggravated by Military service. Additionally the applicant is also entitled to the benefit of rounding off as per the law settled on this matter by the Hon’ble Apex Court in the case of *Sukhvinder Singh vs. Union of India & Ors.*, reported in (2014) STPL (WEB) 468 SC.

10. In view of the above, this O.A. is **allowed**. The disability of the applicant **PORTAL HYPERTSNION (PORTAL CAVERNOMA)** is considered as aggravated by Military service and the applicant is eligible for disability pension @ 20% for life, which would be rounded off to 50% for

life w.e.f. his date of discharge. However, due to law of limitation, his arrears of disability pension will be restricted to three years before the date of filing this O.A.. The date of filing of this O.A. is 04.10.2016. 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.

11. No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: April, 2019
PKG