

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 307 of 2018

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)

Pradip Kumar Singh (No. JC-422033Y Ex Subedar), Son of Late Bholu Singh, Resident of Sector – A, Vijay Nagar, Neelmatha, Post Office – Dilkusha, Tehsil – Sarojini Nagar, District – Lucknow (Uttar Pradesh)- 226002.

....Applicant

Ld. Counsel for the applicant: **Shri Yash Pal Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer in Charge Records, Mechanized Infantry Regiment, PIN- 900476, C/O 56 APO.
3. Principal Controller of Defence Accounts, (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the: **Mohd Zafar Khan**,
Respondents. Central Govt. Counsel.

ORDER

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

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

- “ (a) Issue/ pass an order or direction setting aside the recommendations of the Release Medical Board held in the month of October 2017 insofar as the same hold the disability of the applicant not connected with military service (Annexure No. 1 to the Original Application) and order / letter dated 03.02.2018 passed/ issued on behalf of the Officer in charge Records, Mechanized Infantry Regiment (Annexure No.2 to the Original Application), after summoning the relevant original records, and consider case of the applicant and grant disability pension extending the benefit of rounding off from the date of discharge including arrears thereof with interest.*
- (b) Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c) Allow this Original Application with cost.”*

2. The undisputed factual matrix on record is that the applicant joined the Army on 25.04.1989 and was discharged from service on 31.12.2017. He was placed in low medical category for disability “Unstable Angina” prior to his release from service on 31.12.2017. His disability was assessed by Release Medical Board (RMB) @ 30% for life and opined as

neither attributable to nor aggravated by Military Service (NANA). His claim for grant of disability pension was accordingly rejected by respondents vide letter dated 03.02.2018. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of present O.A.

3. Learned counsel for the applicant pleaded that since the applicant was enrolled in a medically fit condition and was discharged in low medical category and there is no note in the service documents that he was suffering from any disease at the time of entry into service, his disability should be considered as attributable to and aggravated by Military Service and the applicant should be granted disability pension.

4. **Per Contra**, learned counsel for the respondents submitted that the Medical Board considered the disability of the applicant @ 30% for life as NANA. Paragraph 173 of Pension Regulations 1961 (Part-1) clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above. Since his disability was considered as neither attributable to nor aggravated by military service

(NANA), hence his claim for grant of disability pension has correctly been rejected.

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

6. The proposition of law with regard to attributability has already been settled by the Hon'ble Supreme Court and is no more a *res integra*. On careful perusal of RMB, we find that the only reason for declaring the disability of the applicant as NANA was that it originated in a peace area and not in a field area. We do not find this explanation to be satisfactory. Military personnel in peace station also have their own pressures of intense training and other military duty related stress and strains. Hence we would like to give benefit of doubt to the applicant in terms of the law settled by Hon'ble Supreme Court in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316. Thus considering all issues we are of the opinion that the disability of the applicant i.e. "Unstable Angina" should be considered as 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).

8. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The impugned order passed by the respondents is set aside. The disability of the applicant i.e. "Unstable Angina" is to be considered as aggravated by Military Service. The respondents are directed to grant disability element to the applicant from his date of discharge i.e. 01.01.2018 @ 30% for life which shall be rounded off to 50% for life. This exercise shall be completed within a period of four months from today, failing which the respondents shall have to pay interest at the rate of 9% per annum on the total amount, from the date it becomes due till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Date: April 2019
Ukt/-

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