

COURT NO 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)

ORIGINAL APPLICATION No. 243 of 2018

Wednesday, this the 01st day of Aug, 2018

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

SL-04249K Lt Col Triveni Chandra Pandey, S/o Urbi Dutt Pandey, R/o 301,
Akbar Apartment, Chilliya Naula, Ranikhet, District-Almora, PIN-263645.

..... Applicant

Ld. Counsel for the : **Shri Kishore Rai, Advocate.**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-11000.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Addl Dte Gen Personnel Services Adjutant General’s Branch IHQ of MoD (Army) Rom No-11, Plot No-108 (West) Brassey Avenue, Church Road New Delhi-110001.
4. 3 Tech Trg Bn 3 EME Centre, Pin 900433 C/O 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Namit Sharma,**
Respondents. Central Govt Counsel.

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension and its rounding off. The applicant has prayed for the following reliefs:-

(a) To quash the order dated 06.11.2017 passed by respondent No 3 (contained as Annexure No 7 to this original application).

(b) To issue direction to grant disability pension to the applicant from the date of his retirement i.e. 29.02.2016 along with rounding off to the tune of 50%.

(c) To summon the entire records of the applicant pertaining to computation of his disability pension.

2. Counter affidavit filed by Ld. Counsel for the respondents is taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Army as soldier (General Duty) on 16.09.1978 and later was granted commission in the Army on 03.06.1995 (PC/SL) and retired from service on 29.02.2016 on reaching the age of superannuation in low medical category P2 (permanent) for life. At the time of retirement, the applicant was brought before Release Medical Board (RMB) in July 2015. RMB opined that the applicant was suffering from Primary Hypertension (I-10.0) and Diabetes Mellitus Type-II (E-II). The RMB further opined that Primary Hypertension was NANA because it originated in peace area and Diabetes Mellitus Type-II (E-II) was NANA because it is a life style disease not related to service.

4. Ld. Counsel for the applicant submitted that the Release Medical Board conducted at Military Hospital, Bhopal granted 30% disability for Primary Hypertension (1-10.0) and 20% disability for Diabetes Mellitus Type-II (E-II) (composite disability @ 40% for life) but opined that it is neither attributable to nor aggravated by military service. Claim for grant of disability pension was rejected vide order dated 27.11.2015 with directions to prefer an appeal before Appellate Committee on First Appeals (ACFA). The first appeal preferred on 26.02.2016 was rejected vide order dated 08.02.2017 with an advice to prefer second appeal to the Appellate Committee which on being preferred on 18.04.2017 was also rejected on 06.11.2017.

5. Learned counsel for the applicant further submitted that at the time of enrolment of the applicant in the Army as Sepoy (Soldier General Duty) i.e. 16.09.1978 and at the time of grant of commission to him on 03.06.1995, 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.

6. Rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the Release Medical Board has opined that the disease suffered by the applicant is neither attributable to nor aggravated by military service, as such, the applicant has rightly been denied disability pension.

7. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

8. The law on the point of grant of disability pension and its rounding off is no more Res Integra. In the case of *Dharamvir Singh vs. Union of India & Ors*, (2013) 7 SCC 316, while considering the question with regard to payment

of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In *Dharamvir Singh's* (supra), their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. Similar view was expressed by their Lordships of the Hon'ble Supreme Court in the cases of *Sukhvinder Singh vs. Union of India*, (2014) 14 SCC 364, *Union of India & ors vs. Angad Singh Titaria*, (2015) 12 SCC 257 and *Union of India vs. Rajbir Singh*, (2015) 12 SCC 264.

9. In the case in hand, since the Release Medical Board has assessed 40% composite disability for life for both disabilities and declared them NANA, we find that the crisp and one liner justification given by RMB stating Primary Hypertension to be NANA because it originated in peace station is neither convincing nor rational to deny attributability. Similarly calling Diabetes Mellitus Type-II (E-II) a type of diabetes as life style disease and not related with service is also neither logical nor convincing to deny attributability. Hence we give benefit of doubt to applicant and accept both these diseases to be aggravated by military service.

10. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of *K.J.S. Buttar vs Union of India and ors*, (2011)11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No. 5591/2006, *Union of India*

& anr vs. K.J.S.Butter and *Union of India vs. Ram Avtar & ors* (Civil Appeal No. 418 of 2012 decided on 10th December, 2014.

11. Accordingly, O.A. No. 243 of 2018 is **allowed**. The impugned order dated 08.07.2015 passed by the Release Medical Board (RMB) and order dated 27.11.2015, conveying rejection of claim for disability pension to the applicant is set aside. The respondents are directed to grant disability pension to the applicant @ 40% for life rounded off to 50% for life w.e.f. 29.02.2016 i.e. date of retirement. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the applicant shall also be entitled to simple interest @ 9% per annum 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 S.V.S. Rathore)
Member (J)

Dated: Aug ,2018
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