

Court No. 1
E-Court

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 292 of 2020

Friday, this the 26th day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Jag Vijay Singh, No. 10182330, Ex Sep, son of Shri Ram Badan Yadav, R/O Village-Vanpurwa, P.O. – Dhanupur, P/S & Teh: Handiya, Allahabd (U.P.).

.... **Applicant**

Ld. Counsel for the: **Shri Vijay Kumar Pandey**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, RK. Puram, New Delhi-11001.
2. OIC Record, Record Kumaoun Regiment Ranikhet-263645.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP).

... **Respondents**

Ld. Counsel for the: **Shri Ashish Kumar Singh**, Advocate.
Respondents.

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(a) That this Hon'ble Tribunal may kindly be pleased to grant the Disability Pension to the applicant @ 20% w.e.f from 12.08.1993 to 31.12.1995 and rounded of the disability pension @ 50% w.e.f 01.01.1996 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual payment.

(b) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

(c) That this Hon'ble Tribunal may be pleased to award the cost of this original application and legal expenses Rs. 50,000/- (fifty thousand) and allow the case.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the 11 Inf Bn (TA) on 30.01.1993 and was Invalided out from service in low medical category on 12.08.1993 with about 120 days of service on account of suffering from (i) **'PERFORATION OF TYMPANIC MEMBRANE (Lt EAR) (389)** (ii) **ACCUTE OTITIS MEDIA**'. Invaliding Medical Board was held at Military Hospital, Allahabad on 02.08.1993 which has assessed his disability @ 20% for two years neither attributable to nor aggravated by military service (NANA). Enormous applications/representations and appeals were submitted by applicant from time to time since 1994 to opposite parties but no action has been taken. After, a gap of long time applicant's disability pension claim was rejected vide order dated 25.05.2007. Thereafter, applicant preferred an appeal on

16.04.2019 for grant of disability pension, but the same was also rejected vide order dated 10.05.2019 being neither attributable to nor aggravated by military service and also not connect with service. Now, applicant has filed this O.A. for grant of disability pension.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by applicant after joining the service, should be considered as either attributable to or aggravated by military service and he should be entitled to disability pension. Further submission of Ld. Counsel for the applicant is that applicant's disability had arisen when the applicant sustained injury after he was hit (Slapped) on his left ear by his instructor during his training period. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected being disability as NANA. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the since the IMB has considered the applicant's disability as NANA, therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily in line with the opinion of IMB declaring the disease as NANA as the disability has no relation to service conditions. Learned counsel for the respondents also agreed that applicant sustained

injury when he was hit (slapped) on his left ear by his instructor during training period.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB, AFMSF-7 dated 07.05.1993 and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. We have noted that the applicant's disabilities (i) **'PERFORATION OF TYMPANIC MEMBRANE (Lt EAR) (389)** (ii) **ACCUTE OTITIS MEDIA'** are assessed @ 20% for two years neither attributable to nor aggravated by military service (NANA). It also not disputed that the applicant sustained injury when he was hit (slapped) on his left ear by his instructor during training period. The same has been conceded in the medical case sheet of 27.05.1993. As such we are not in a position to accept that the disability could have arisen before entering service.

7. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

"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).

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)].

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).

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]

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. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to applicant only by endorsing that the applicant's aforesaid disease/disability was existing prior to enrolment and therefore the IMB has denied grant of disability pension being NANA. We do not find this illogical remark adequate as he was enrolled in the Army in medically and physically fit condition. Therefore, respondent cannot deny attributability/aggravation to a soldier, who was fully fit at the time of enrolment and the disability in question had first started in 19.03.1993 i.e. after completion of about one month of service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the applicant should be considered as aggravated by military service.

9. As a result of foregoing discussion, the O.A. is **Partly allowed**. The impugned orders are set aside. The disabilities of

the applicant are to be considered 20% as aggravated by military service. Since applicant's disabilities were assessed for two years from the date of discharge, he is eligible for disability pension for that period only. The respondents are also directed to hold Re-Survey Medical Board (RSMB) of the applicant to assess his further disablement, if any, within 03 months from today. His further entitlement to disability pension will be subject to the outcome of the RSMB. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

10. No order as to costs.

11. Pending applications, if any, disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 26th August, 2021

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