

RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 390 of 2019

Friday, this the 04th day of December 2020

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

Service No. 993156-A Ex Hav Clk Pradeep Kumar Nishad,
Son of late Ram Laut, Resident of Mohalla- Vikram Nagar,
Post – Manak Nagar, District – Lucknow (U.P.) - 226001.

.....Applicant

Ld. Counsel for : **Shri VP Pandey,**
Applicant **Advocate**

Versus

1. Union of Indiathrough the Secretary, Ministry of Defence, New Delhi- 110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer In- Charge Records, The Dogra Regiment, PIN- 900235, C/o 56 APO.
4. Commanding Officer, 5 Dogra Regiment, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

*(a) To set aside/quash the Invaliding Medical Board proceeding as contained in **Annexure No. A-1 (i)**, being illegal and arbitrary.*

*(b) To set aside/quash the order dated 06 June 2019 (**Annexure No. A-1 (ii)**) passed by First Appellate Committee on Pensions being illegal and arbitrary.*

(c) To issue/pass an order or direction to the Respondents to grant disability pension to the applicant from the date of discharge i.e. 31st January 2018.

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

(e) Cost of the O.A. be awarded to the applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 20.06.1994 and was discharged from service on 31.01.2018 in low medical category S2(P)H1A1P2(P)E1 under the provisions of Rule 13 (3) III (iii) (a) (i) of Army Rule, 1954. At the time of discharge Medical Board held on 11.12.2017 assessed disabilities as “(i) **SCHIZOPHRENIA** (40%) and (ii) **DIABETES MELLITUS TYPE-ii**” (20%) and composite assessment for all disabilities was 50% for life and considered as neither attributable to nor

aggravated by the military service. The petitioner was granted service pension with effect from 01.02.2018 for life. Claim of the applicant for the grant of disability pension was rejected by the respondents and applicant was conveyed the same vide Dogra Regiment letter dated 24.08.2018 being neither attributable to nor aggravated by military service. Applicant preferred Appeal for grant of disability pension but the same was also rejected by the respondents vide order dated 06.06.2019. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. We have heard Shri VP Pandey, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he has been retired from service in Low Medical Category with disabilities “(i) **SCHIZOPHRENIA** (40%) and (ii) **DIABETES MELLITUS TYPE-ii**” (20%) for life and composite assessment for all disabilities as 50% for life. He pleaded for the disabilities of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is also entitled to disability pension and its rounding off to 75%.

5. Learned counsel for the respondents has not disputed that applicant suffered composite disabilities to the extent of 50% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disabilities “(i) **SCHIZOPHRENIA** (40%) and (ii) **DIABETES MELLITUS TYPE-ii**” (20%) for life and composite assessment for all disabilities as 50% for life but disability qualifying for disability pension has been assessed as NIL for life and disabilities are found as neither attributable to nor aggravated by military service, therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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 invalidated 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. Thus, considering all issues we have noted that the only reason given by RMB for denying Attributability for disease "(i) **SCHIZOPHRENIA** and (ii) **DIABETES MELLITUS TYPE-ii**" for life is that it started in a peace area and not in a Fd/HAA/CI area. We are not convinced by this logic that stress & strain of military life is only in Fd/HAA/CI areas and there is no such

stress in peace areas. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of ***Dharamvir Singh*** (Supra). Therefore, we consider the diseases of the applicant i.e. "(i) **SCHIZOPHRENIA** and (ii) **DIABETES MELLITUS TYPE-ii**" as aggravated by military service.

9. 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 and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly O.A. is **allowed**. The impugned order dated 06.06.2019 rejecting the claim for grant of disability pension passed by the respondents is set aside. The disabilities "(i) **SCHIZOPHRENIA** (40%) and (ii) **DIABETES MELLITUS TYPE-ii**" (20%) for life and composite assessment for all disabilities as 50% for life are to be considered as aggravated by military service. The respondents are directed to grant

disability element to the applicant from the date of discharge @ 50% for life which would stand rounded off to 75% for life. 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.

12. No order as to costs.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December 2020

UKT/-