

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 504 of 2019**Tuesday, this the 09th day of February 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sub Lakhan Singh, No. JC-404562H, S/o Late Drayab Singh, R/o Vill- Nagla Hira Singh, P.O.- Kagarol, Tehsil – Kirawali, Distt – Agra (U.P.)- 283119.

.....Applicant

Ld. Counsel for : **Shri Ashok Singh &**
Applicant **Shri Vikas Singh Chauhan**

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi 110011.
2. Chief of the Army Staff, Integrated Head Quarters, Ministry of Defence (ARMY), DHQ PO, New Delhi - 110011.
3. Officer In- Charge Records, Brigade of the Guards, PIN- 900746, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Ld. Counsel for the : **Mrs Amrita Chakraborty,**
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:-

8.1 To quash/set aside the impugned order dated 06 Jul 2016 passed by the respondent No. 2 as a Annexure No A-1 with compilation No 1 to this Original Application and passed the order for grant of disability pension at the rate of 20% for life with all consequential service benefits along with arrears w.e.f. 01 Apr 2015 to onwards in the demand of justice.

8.2 Issue an appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the demand of justice.

8.3 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 02.03.1987 and was discharged from service on 01.04.2015 in low medical category E2 (Permanent) under item 13 (3) I (i) (a) of Army Rules, 1954. At the time of discharge Release Medical Board held at Military Hospital Jalandhar cantt on 31.10.2014 assessed disability **“PRIMARY OPEN ANGLE GLAUCOMA BOTH EYE” @ 20%** for life and considered as neither attributable to nor aggravated by the military service. The petitioner was granted service

pension from the date of retirement. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 06.07.2016 being neither attributable to nor aggravated by military service and onset of invaliding disease was in peace area. Applicant preferred first and second appeal for grant of disability pension but the same were also rejected by the respondents vide orders dated 05.08.2016 and 02.08.2019 respectively. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. We have heard Shri Ashok Kumar and Shri Vikas Singh Chauhan, Ld. Counsel for the applicant and Mrs Amrita chakraborty, 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 disability **“PRIMARY OPEN ANGLE GLAUCOMA BOTH EYE”** 20% for life. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service and consider as attributable to and aggravated by 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 50%.

5. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 20% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was assessed @ 20% for life but disability qualifying for disability pension has been assessed as NIL for life and disability is found as neither attributable to nor aggravated by military service and not connected with 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 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. Thus, considering all issues we have noted that Release Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for Military service. In absence of any evidence on record to show that the applicant was suffering from disease “**PRIMARY OPEN ANGLE GLAUCOMA BOTH EYE**” at the time of acceptance of his service and the fact that

the applicant had put in over 28 years of service when for the first time the disease was detected in the year 2010, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to military service. 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 disease of the applicant i.e. **“PRIMARY OPEN ANGLE GLAUCOMA BOTH EYE”** 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 orders dated rejecting the claim for grant of disability pension passed by the respondents are set aside. The disability **“PRIMARY OPEN**

ANGLE GLAUCOMA BOTH EYE” @ 20% for life is to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant from three years prior to filing of Original Application @ 20% for life which would stand rounded off to 50% for life. Date of filing of O.A. is 04.09.2019. 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 @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 09 February, 2021

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