

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 316 of 2020**Tuesday, this the 16th day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 13809812-L, Ex-Sapper Raj Narayan Singh
S/o Inder Dev Singh
R/o Vill – Markara Dera, Post – Gahmar,
Tehsil – Jamania, District – Ghazipur, Pin Code-232327
Presently residing at 21/1, Power House Area,
Air Force Station, Chakeri, Kanpur (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Headquarters, New Delhi -110011.
3. The Officer-in-Charge Record Office ASC Records (South), Bangalore-560007.
4. Additional Directorate General of Personnel Services/AG's Branch, IHQ of Ministry of Defence (Army) PIN900256.
5. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (Prayagraj).

..... Respondents

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

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

“(a) To issue pass an order or directions to set-aside / quash the impugned order dated 28.09.1986/ No. G3/86/6643/VIII

dated 14.10.1986 passed by respondent no. 5, letter no. 7(1139) 89 (D-Pen) dated 19.03.1990 (copy not provided to the applicant) passed by Government of India, Ministry of Defence order dated 15.11.2004, 17.04.2013 and 21.06.2019 passed by respondent no.-3.

(b) To issue pass an order or directions to the respondents to grant arrear of disability element of disability pension @ 100% for two year from date of discharge i.e. 20.09.1986 to 19.09.1988 alongwith 12% interest on arrear.

(c) To issue pass an order or directions to the respondents to constitute the fresh medical board to assess the present medical condition of applicant and if any disability percentage occurs then accordingly grant disability element of disability pension monthly in light of Hon'ble Apex Court judgments and Government of India, MoD letter dated 31.01.2001 in the interest of justice.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case is also granted alongwith cost of the OA."

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 16.01.1974 and was discharged from service on 20.09.1986 being placed in low medical category 'BEE' (Permanent) under Army Rule 13 (3) III (iv) after rendering more than 12 years service. The Release Medical Board (RMB) assessed his disability "**TESTICULAR TUMOUR (LT) TREATED EFFECTS OF**" @ 100% for two years and opined the disability as neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected by PCDA (P) Allahabad vide their letter dated 14.10.1986. The applicant submitted an appeal dated 14.04.1988 which was suitably replied by the respondents vide letter dated

02.05.1988. Thereafter, applicant sent another appeal dated 26.07.1988 which was rejected by the respondents vide order dated 19.03.1990. Another appeal dated 25.10.2004 was filed which was also rejected vide order dated 15.11.2004. Aggrieved by the decision of the respondents, applicant filed a Writ Petition No. 4080/2008 before the Hon'ble High Court of Delhi which was disposed of vide order dated 28.05.2008 with direction to the respondents to decide the pending appeal of applicant in light of judgment passed in WPC 3697/2006 **Sep Roop Singh vs. UOI & Ors**, decided on 28.05.2008. Thereafter, a reasoned and speaking order dated 05.06.2009 was passed by respondent No. 3 stating that applicant's claim for grant of disability element was not awardable. Thereafter, applicant submitted another petition dated 02.06.2019 which was also rejected vide order dated 21.06.2019. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of RMB by higher competent authority of PCDA (P) was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh vs. UOI & Ors**, Case No. 4949 of 2013, decided on 02.07.2013 and **Sukhvinder**

Singh vs. Union of India, Civil Appeal No. 5605 of 2010, decided on 25.06.2014 and ***Union of India vs. Ram Avtar*** and Government of India letter dated 31.01.2001 and pleaded that applicant be granted disability pension @ 100% for two years from the date of discharge and thereafter, RSMB to be conducted for further assessment of disability.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **“TESTICULAR TUMOUR (LT) TREATED EFFECTS OF”** has been regarded as 100% for two years by RMB as neither attributable to nor aggravated by military service and not connected with service. Hence, as per Rule 173 of Pension Regulations for the Army 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB 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. 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)."

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'A malignant disease, not connected with service'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started on completion of six years of service, therefore, we are of the considered opinion that the benefit of doubt should be given to applicant as per the

Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 100% disability element for two years from his date of discharge from service.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 100% for two years from the date of discharge from service. The respondents are directed to grant disability element @ 100% for two years from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

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

Dated: February, 2021
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