

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 111 of 2020**Thursday, this the 18th day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No JC-167633P Ex Sub Ram Sarup, S/o Sri Khubhi Ram,
Resident of Vill- Bahrabad, P.O.- Ganiyawali, Tehsil- Atrauli,
District – Aligarh, State – Uttar Pradesh- 202280.

.....Applicant

Ld. Counsel for Applicant: **Shri KP Datta, Advocate**

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), New Delhi- 110011.
2. The Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), Sena Bhawan, New Delhi.
3. Officer in Charge Records, Army Ordnance Corps, PIN – 900453, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) - 211014.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar 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 issue/ pass an order or directions to set aside/ quash the letter no. G3/87/36/1/94 dated 30.05.1995 (copy not provided to the applicant) passed by respondent no. 4 and letter dated 28.11.2018 passed by respondent no. 3.*

(b). *Issue/ pass an order or direction to the respondents to quash/ set aside the arbitrary and illegal order passed by Appellate Committed on First Appeals (ACFA) vide rejection order No. B/40502/814/09/AG/PS-4 (IMP-II) dated 16 March 2010 (Annexure No. A-1 (iii)) rejecting the disability pension claim of the applicant.*

(c). *Issue/ pass an order or direction to the respondents to quash/set aside the arbitrary and illegal order passed by Defence Minister/s Appellate Committee on Pension vide rejection order No. 1 (214)/2010/D(Pen/Appeal) dated 26 May 2011 (Annexure No. A01 (iv)) rejecting the disability pension claim of the applicant.*

(d). *Issue/ pass an order or direction of appropriate nature to the respondents to grant 20% disability pension from the date of his discharge i.e. 10 April 1978 which after rounding of will be 50% w.e.f. 01.01.1996 along with arrears of disability pension with interest at the rate of 18% per annum.*

(e). *Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

(f). *Allow this application with costs.*

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 21.09.1965 and was discharged from service 01.10.1993 on completion of terms of engagement under Rule 13 (3) I (i) (a) of Army Rules,

1954 in Low Medical Category 'CEE (P) for the disease **"NIDDM (DIABETES MELLITUS"**. The Release Medical Board of the applicant held on 31.03.1993 at Military Hospital, Bareilly, assessed disability @40% for 2 years and considered it as neither attributable to nor aggravated by military service (NANA). The applicant was granted service pension from the date of discharge from service for life. Claim of applicant for the grant of disability pension was rejected by the respondents vide letter dated 30.05.1994 being neither attributable to nor aggravated by military service. His first appeal for grant of disability pension was also rejected vide letter dated 19.11.2018. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he has been invalided out of service in Low Medical Category for the disability **"NIDDM (DIABETES MELLITUS"** assessed as 40% for two years. His disability was first time assessed in the year 1992 after about 26 years of service. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 40% for two years, but he submitted that competent authority while rejecting

the claim of the applicant has viewed that disability was 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.

5. We have heard learned counsel for the parties and perused the record.

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. After considering all issues we have noted that the only reason given by Invaliding Medical Board for denying Attributability for disease is that it is not connected with military service being hereditary. We find that when the applicant joined the Army, he was medically examined and found to be in Shape-I and the aforesaid disability was contracted after about 26 years of service which resulted in the downgrading of his medical category. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service and the applicant is entitled to the relief

as per the above judgments of the Hon'ble The Apex Court in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service. We also converge to the view that, in view of law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh**, in the interest of justice, the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

9. On the issue of rounding off of disability pension, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding as he had retired from service on 01.10.1993.

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

11. Accordingly, O.A. is **allowed**. The impugned orders passed by the respondents rejecting the claim for the grant of disability pension are set aside. The respondents are directed to grant disability pension to the applicant @ 40% for two years from the date of discharge. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension. 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 cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 18 February, 2021

UKT/-