

Court No. 1

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

Original Application No. 173 of 2019

Thursday, this the 03rd day of December, 2020

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

No. 13899475-M Ex Hav Dip Chand Teli s/o Late Achhelal Gupta, Resident of Vill-Faridpur, PO-Bandighat, District-Mau (UP).

.... Applicant

Ld. Counsel for the: **Shri Pushp Raj Singh**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter Ministry of Defence, South Block, New Delhi-110001.
3. Officer in Charge, ASC Records Office (South), Bangalore-560007.
4. Principal Controller of Defence Account (P), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the: **Shri Arun Kumar Sahu**, Advocate
Respondents. Assisted by **Maj Sini Thomas**,
Departmental Representative

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:-

- (I) *The Hon'ble Tribunal may be pleased to quash the intimation order dated 24.01.2018, as contained in (Anx A-1) and order dated 12.12.2017 as contained in (Anx-A-2) issued by respondent No 3 and 4.*
- (II) *To quash the order by which disability pension has been stopped by summoning the same from respondents.*
- (III) *The Hon'ble Tribunal may kindly be pleased to direct the respondents to grant disability pension to the applicant w.e.f. 05.09.2009 by rounding off disability from 30% to 50% as per Govt of India letter dated 31.01.2001 along with arrears and interest thereon @ 18% p.a.*
- (IV) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (V) *Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case are that applicant was enrolled in the Army on 01.11.1973 and was discharged from service w.e.f. 31.10.1995 on completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954 in low medical category with disability element @ 30% for five years. Accordingly he was granted service element of pension as well as disability element of pension vide PPO No. D/E/436/1999. Applicant's Re-Survey Medical Board (RSMB) was held on 11.08.1999 at Military Hospital, Allahabad which assessed his disability

@ 30% for ten years and disability pension was granted vide PPO No. D/RA/9157/99. Later Govt of India, Ministry of Defence vide letter dated 31.01.2001 issued directions for holding RSMB in respect of those who were in receipt of disability pension for a limited period and accordingly applicant's RSMB was held at Military Hospital, Allahabad on 06.08.2002 which assessed his disability @ 30% for life. Disability pension was paid to applicant up to 05.09.2009 and thereafter stopped by the respondents. Hence this O.A.

3. Learned counsel pleaded for grant of disability element to applicant as RSMB assessed applicant's disability @ 30% for life.

4. The record reveals that applicant had sustained Right Eye injury on 17.05.1995 and for said injury a court of inquiry (C of I) was conducted which considered the injury as attributable to military being on active service. The respondents vide para 14 and 15 of counter affidavit have conceded that final RSMB conducted on applicant has assessed applicant's disability @ 30% for life. For convenience sake extract of aforesaid paras are given as under:-

"On careful scrutiny of O.A. it appears that applicant is not being paid disability element with effect

from 06 Sep 2009 by his Pension Disbursing Agency i.e. State Bank of India, Civil Lines, Mohamadabad Gohna, Azamgarh (UP) as notified vide PPO No D/RS/15186/2002 dated 07 Mar 2003. Now a case has been taken up by ASC Records (South) with the pension sanctioning authority, Centralised Pension Processing Centre (CPPC) and Pension Disbursing Agency (PDA) concerned to examine the matter and payment of disability element to the applicant with effect from 06 Sep 2009 as notified vide Office of the Chief Controller of Defence (Pensions) Allahabad PPO No D/RS/15186/2002 dated 07 Mar 2003."

5. Thus in view of the fact that RSMB has assessed applicant's disability @ 30% for life and respondents have conceded grant of disability element to applicant w.e.f. 06.09.2009, presumably the CDA (P), Allahabad has denied it owing to attributability/aggravation factor.

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. We are, therefore, of the considered opinion that the applicant is entitled to disability element in view of the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as attributable to military service.

8. In view of the above applicant is held entitled to 30% disability element for life which shall stand rounded off to 50% disability element for life with effect from 06.09.2009.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are aside. The disability of the applicant is to be considered as attributable to military service and the benefit of rounding off to 50% is extended in terms of ***Union of India and Ors vs. Ram Avtar & Ors, Civil Appeal No 418 of 2012 dated 10th December 2014***). As far as payment of arrears of disability element is concerned, Hon'ble the Apex Court in the case of ***Shiv Dass vs Union of India & Ors*** reported in 2007 (3) SLR 445 has held that arrears of disability element are restricted to three years prior to filing of the O.A. if the same is filed belatedly and delay is condoned. Since the applicant has come to this Tribunal after a considerable delay hence the arrears are restricted to three years preceding to the date of filing of O.A. i.e. 23.04.2018.

10. Accordingly, the respondents are directed to release the arrears within a period of four months from the date of receipt of a copy of this order, default will attract interest @ 8%.

11. No order as to costs.

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

Dated: 03 December, 2020

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