

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

O.A. No. 718 of 2020

Ex Sub Lal Sahab Yadav
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>09.12.2020</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri Yashpal Singh, Ld. Counsel for the applicant and Dr. Gyan Singh, Ld. Counsel for the respondents.</p> <p>2. 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:-</p> <p style="padding-left: 40px;">“(a) Issue/pass an order or direction setting aside the recommendations of the Release Medical Board held on 24.11.2015 insofar as the same hold the disability of the applicant not connected with military service; and order dated 26.07.2017 and 31.08.2018 passed by the Appellate Committee on First Appeal and Second Appellate Committee on Pension respectively, rejecting the claim of the applicant for grant of disability pension, after summoning the relevant original records; and consider case of the applicant and grant disability pension extending the benefit of rounding off from the date of discharge including arrears thereof with interest.</p> <p style="padding-left: 40px;">(b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.</p> <p style="padding-left: 40px;">(c) Allow this original Application with cost.”</p> <p>3. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 08.11.1985 and was discharged from service on 30.11.2015 (AN) in low medical category after completion of his terms of engagement. The Release Medical Board (RMB) assessed his disabilities (i) “PRIMARY HYPERTENSION (I-10)” @ 30% for life and (ii) “IMPAIRED GLUCOSE TOLERANCE (IGT) (R 73.0)” @ 6-10% for life and composite assessment for</p>

both the disabilities was @ 40% for life. However, the RMB opined that the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA) and onset of the disabilities was in peace station. The applicant's claim for grant of disability pension was not granted by the respondents vide order dated 02.06.2016. His first and second appeals were also rejected vide order dated 26.07.2017 and 31.08.2018 respectively. Hence the instant Original Application has been filed.

4. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in ***Dharamvir Singh v. Union of India and others***, (2013) 7 SCC 316 and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 40% for life and the same is to be broad banded to 50%.

5. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB has assessed the disabilities of the applicant @ 40% composite, it has opined that the disabilities are NANA and onset of the disabilities was in peace area. As such, his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

6. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records. The questions

which needs to be answered in the instant application is whether the disabilities of the applicant are attributable to or aggravated by Military Service?

7. After going through the opinion of the specialist medical officer, we have noted that the second disability i.e. 'Impaired Glucose Tolerance (IGT)' has been opined as NANA by the RMB in light of the fact that ID is a condition which is a precursor of Diabetes per se being metabolic disorder, hence we are of the opinion that benefit of doubt in this disease cannot be given to the applicant and we agree with RMB opinion that the disease is NANA.

8. As far as first disability i.e. 'Primary hypertension' is concerned, we have noticed that the only reason for declaring the disease as NANA is that it has originated in peace area and has no close time association with Fd/CI Ops/HAA tenure. However, on further scrutiny, we have observed that this disability was detected in November, 2015, after 30 years of service i.e. at the time of discharge from service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as NANA are very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that first disability ie. "Primary Hypertension" @ 30% is to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra).

9. The applicant will also be eligible for the benefit of rounding off of first disability from 30% to 50% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

10. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned orders are set aside. The applicant's disability "**Primary Hypertension**" @ 30% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 30% to 50% for life from the date of his discharge i.e.30.11.2015. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v. Union of India and others** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 01.05.2019. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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