

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 80 of 2020**Friday, this the 15nd day of January 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sepoy Jeewan Chandra Pandey (Army No 4163183) of 7 Kumaon Regiment, C/O 56 APO, Son of Late Janardan Pandey, C/o Shri Puran Chandra Pant, Pant General Store, P.O. – Bageshwar, District- Bageshwar (Uttarakand)- 263642.

.....Applicant

Ld. Counsel for : **Shri KKS Bisht,**
Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi- 110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Officer in Charge Records, The Kumaon Regiment, Ranikhet, PIN – 900473, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) - 211014.

.....Respondents

Ld. Counsel for the : **Shri RC Shukla,**
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) *Issue/ Pass an order or direction to the respondents to quash/ set aside the arbitrary and illegal order passed by Office of the C.D.A. (P), Allahabad, respondent No. 4 vide letter No. G-3/78/3442/IV/256 dated 24.08.1978 (Annexure No. A-1 (ii)) rejecting the disability pension claim of the applicant.*

(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 14.06.1971 and was invalided out from service on medical ground with effect from 10.04.1978 (AN) under Rule 13 (3) (V) of Army Rules,

1954 in Low Medical Category 'BEE (P) for the disease **"MYOPIA (BOTH EYES)"**. The Release Medical Board of the applicant held on 10.01.1978 at Military Hospital, Ranikhet, assessed disability 15% for 2 years and considered it as neither attributable to nor aggravated by military service (NANA). Claim for grant of disability pension was rejected by PCDA (P), Allahabad vide letter dated 24.08.1978 on the ground of disability being less than 20% and his first and second appeals were also rejected by the respondents vide letters dated 16.03.2010 and 26.05.2011 respectively. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the army in medically fit condition and, thereafter, he has been invalided out from army service after about 7 years in Low Medical Category for disease **"MYOPIA (BOTH EYES)"** assessed as 15% for two years. He pleaded that disability of the applicant be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to disability pension and its rounding off to 50%. Ld. Counsel for the applicant further submitted that claim for the grant of disability pension was wrongly rejected on the ground of disability percentage being less than 20% and NANA. Ld.

Counsel pleaded that the applicant is entitled to grant of disability pension and its rounding off.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 15% for two years due to disease, 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-1), the claim of the applicant for grant of disability pension has correctly been rejected. However, applicant has been granted gratuity admissible to him.

5. We have heard Shri KKS Bisht, Ld. Counsel for the applicant and Shri SC Shukla, Ld. Counsel for the respondents 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 a constitutional degenerative disorder. 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 7 years of

service which resulted in the downgrading of his medical category. The applicant was posted with 3rd Border Scout Unit which was deployed in High Altitude Area i.e. Indo-China/TIBET BORDER. This location was declared as F.S.C.A of TIBET Border. The area is completely overwhelmed with snowfall. Due to regular snowfall, the applicant suffered with eye problem in both of his eyes. 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 conditions 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.

9. Further, since the applicant was discharged from service before completion of terms of engagement in low medical category, his discharge from service should be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of ***Sukhvinder Singh vs Union of India & Others***, Civil Appeal No. 5605 of 2010, decided on 25.06.2014. In our view, the case is fully covered by the aforesaid decision of Hon'ble the Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent*

disability pension.”. Para 9 of the judgment, being relevant is quoted below.

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

10. As for as the benefit of Broad Banding is concerned, 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 for the period in question i.e. two years from 11.04.1978 (AN).

11. Since the applicant’s IMB was valid for two years w.e.f. 11.04.1978, hence, the respondents will now have to conduct a fresh RSMB for him.

12. In view of the above, the Original Application No. **80 of 2020** deserves to be allowed, hence **allowed**. The impugned orders dated 24.08.1978, 16.03.2010 and 25.5.2011 are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is held to be entitled to disability pension @20% for two years from the date of his discharge i.e. 11.04.1978. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15 January, 2021

UKT/-