

ARMED FORCES TRIBUNAL, REGIONAL BENCH,**LUCKNOW****ORIGINAL APPLICATION NO 479 of 2017**

Wednesday, this the 14th day of March 2018

“Hon’ble Mr. Justice SVS Rathore, Member (J)
Hon’ble Lt Gen Gyan Bhushan, Member (A)”

Colonel H.M. Maheshwari (Retd), son of Late B.K. Maheshwari, resident of F-226 AWHO Colony, Tyagi Vihar, Sharda Nagar, Lucknow, PIN – 226002.

....Applicant

Ld. Counsel for the applicant: Shri V.A. Singh, Advocate.

Verses

1. Union of India through the Secretary, Ministry of Defence (Army) New Delhi-110011.
2. Chief of the Army Staff, Integrated Head Quarter of Ministry of Defence (Army), New Delhi – 110011.
3. Additional Directorate General of Personal Services (AG/PS-4/IMP-II), Adjutant General’s Branch. IHQ of MoD (Army), New Delhi-110066
4. Principal Controller Defence Accounts (Pension) Draupadi Ghat, Allahabad- 211014

.....Respondents

Ld. Counsel for the Respondents : Dr Shailendra Sharma Atal
 . assisted by Maj Salen Xaxa,
 Legal Cell.

ORDER

Per Hon'ble Lt Gen Gyan Bhushan, Member (A)

1. Being aggrieved with non inclusion of disability 'PRIMARY HYPERTENSION' and rejection of rounding off of the disability pension, the applicant has preferred the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007
2. We have heard Shri VA. Singh, learned counsel for the applicant and Dr Shailendra Sharma Atal, learned counsel for the respondents assisted by Maj Salen Xaxa, OIC, Legal Cell.
3. Couched in brevity, the facts of the case are that the applicant was commissioned in the Indian Army on 14.06.1986. During the period November 1998 to September 2001, the applicant served at field areas as well as in counter insurgency area and high altitude area in Kupwara, Jammu & Kashmir. In the year 2000, while the applicant was posted at Kupwara, Jammu & Kashmir, he was evaluated for abnormal ECG and High Blood Pressure in Research & Referral (R&R) Hospital, Delhi. On 27.12.2008 the applicant suffered 'CORONARY ARTERY DISEASE NON ST ELEVATION MI ANTERIOR WALL' and was placed in Low Medical Category (P-2) and was prescribed indirect anti-hypertensive drugs. On 21.08.2011 the applicant was admitted Command Hospital for chest pain and high blood pressure. Since the applicant was to superannuate on 31.05.2014, Release Medical Board was conducted on 21.01.2014. The Release Medical Board found the applicant suffering from the following diseases:-

- (i) CORONARY ARTERY DISEASE NON ST ELEVATION MI ANTERIOR WALL.
- (ii) PRIMARY HYPERTENSION, and
- (iii) PIVD.

4. The Medical Board assessed ID (i) and (iii) to be 'aggravated by Military Service' with disability @ 30% and 40% respectively with composite assessment of said disabilities @ 60% for life. The net assessment qualifying for disability was assessed @ 40% for life by the Release Medical Board. The Medical Board opined ID (ii) 'PRIMARY HYPERTENSION' neither attributable to nor aggravated by Military Service. Thus, the applicant was granted disability pension for ID (i) and (iii) with effect from the date of discharge.

5. The applicant preferred First Appeal for inclusion of 30% disability for 'PRIMARY HYPERTENSION' in cumulative percentage and rounding off thereof which did not find favour with the respondents and was rejected vide order dated 31.01.2017 on the ground that onset of the disease was in August 2012 while the applicant was posted in peace area and as such is neither attributable nor aggravated by Military Service. The Second Appeal preferred by the applicant was also rejected on similar ground vide order dated 15.09.2017.

6. Learned counsel for the applicant submitted that the stand taken by the respondents to the effect that the disability 'PRIMARY HYPERTENSION' was neither attributable nor aggravated by Military Service is per se untenable in view of the settled proposition of law enunciated by Hon'ble the Supreme Court in the case of *Dharmvir Singh vs. Union of India & ors*, (2013) 7 SCC 316.

7. In rebuttal, learned counsel for the respondents submitted that the onset of the disability 'PRIMARY HYPERTENSION' was opined to be neither attributable to nor aggravated by Military Service, hence the applicant has rightly been granted disability pension @ 40% for life in exclusion to ID (ii). However, it was candidly admitted by him that the applicant is entitled for rounding off of the disability pension from 40% to 50%.

8. The law on the point of grant of disability pension and its rounding off is no more res integra. In the case of *Dharamvir Singh vs. Union of India & Ors* (supra), while considering the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In *Dharamvir Singh's* (supra), their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. Similar view was expressed by their Lordships of the Hon'ble Supreme Court in the cases of *Sukhvinder Singh vs. Union of India*, (2014) 14 SCC 364, *Union of India & ors vs. Angad Singh Titaria*, (2015) 12 SCC 257 and *Union of India vs. Rajbir Singh*, (2015) 12 SCC 264.

9. In the case in hand, the Medical Board has assessed the disability as 40% for life for disabilities (i) and (iii). The disability (ii) 'PRIMARY HYPERTENSION' suffered by the applicant in view of the settled proposition of law is also to be considered as attributable to and aggravated

by Military Service. Thus, the applicant is entitled for grant of composite assessment for all the three diseases @ 60% for life.

10. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of *Union of India vs. Ram Avtar & ors* (Civil Appeal No. 418 of 2012 decided on 10th December, 2014). At the cost of repetition, it may be observed that the respondents themselves have admitted the claim of the applicant for rounding off of the disability pension.

11. Accordingly, the O.A. is allowed. The impugned orders are set aside. The respondents are directed to consider the third disability suffered by the applicant also as attributable to and aggravated by Military Service and grant disability pension to the applicant after rounding off @ 75% for life from the date of discharge i.e. 01.06.2014. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order failing which the applicant shall be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to cost.

(Lt Gen Gyan Bhushan)

Member (A)

Dated : March 2018

anb

(Justice SVS Rathore)

Member (J)