

Court No. 1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 326 of 2016

Tuesday, this the 13th day of March, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

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

No 144074488N Ex Nk Diwan Singh, S/o Shri Narayan Singh,
Resident of Village – Tallisar, Khatigaon- Pithoragarh,
At present Village – Prempur Loshgyani, P.O. – Anandpur
Rampur Road, Haldwani, District- Nainital (U.K.).

..... **Applicant**

By Legal Practitioner – **Shri PS Bohara, Advocate,**
Learned counsel for the Applicant.

Versus

1. Union of India, through Secretary, Ministry of Defence,
South Block, New Delhi 110011.
2. The Chairman (SACDP), Second Appellate Committee
On Disability Pension, AG's Branch, IHQ of Ministry of Defence
(Army) Sena Bhawan, New Delhi, PIN – 110011.
3. The Chairman Appellate Committee on First Appeals(ACFA)
AG/PS-4 (Imp-II) Branch, IHQ of Ministry of Defence (Army), Sena
Bhawan, New Delhi, PIN – 110011.
4. The Senior Record Officer, Army Air Defence Records,
PIN – 908803, C/O 99 APO.
5. The Commanding Officer 29 Regiment, Army Air Defence
Records, PIN908803, C/O 99 APO.
6. The Principal Controller of Defence Accounts, Draupadighat,
Allahabad (U.P.) - 441001

..... **Respondents**

By Legal Practitioner – **Dr. Chet Narain Singh, Advocate,**
Learned Counsel for the Respondents.

ORDER

“Per Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

(i) The fact of being non-attributable/non aggravated by military service be expunged/removed as to make me eligible for disability pension.

(ii) The percentage of disability of 40% as granted by medical authorities (RMB) be awarded to me with immediate effect.

(iii) To set aside and quash all the impugned orders and judgments of the Army authorities rejecting the entitlement of disability pension of the applicant.

(iv) Direct to the respondent to allow the disability pension to the applicant from the date of discharge when he was declared 40% disabled for any services by the Medical Board, sustained during the course of his service and service promotional benefits.

(v) Any other relief as are considered proper by the Hon’ble Tribunal be awarded in favour of the applicant and has been remained unasked.

(vi) Cost of the application be awarded to the applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 28.04.1992 and was discharged from service on medical ground with effect from 30.04.2014 (afternoon) under Rule 13 (3) III (i) of Army Rules 1954. Medical Board found the applicant suffering from the disease ‘**MODERATE DEPRESSIVE EPISODE**’ and ‘**OBESITY METABOLIC SYNDROME**’ and assessed the disability as 40% for life and considered it as neither attributable to nor aggravated by military service. Claim for

grant of disability pension was rejected by the respondents vide order dated 21.06.2014. Accordingly, first and second appeals were also rejected vide orders dated 18.03.2015 and 28.06.2016. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of present O.A.

3. We have heard Shri P.S. Bohara, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and was discharged in low medical category and there is no note in the service documents that he was suffering from any disease at the time of entry into service, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He further submitted that in similar cases, various Benches of the Armed Forces Tribunals have granted disability pension, as such the disability pension be granted and as per Government Order dated 31.01.2001, the disability pension be rounded off to 50%.

5. **Per Contra**, learned counsel for the respondents submitted that the Medical Board has considered the disability of the applicant 40% and considered it neither attributable to nor aggravated by military service, as such, in terms of Para 173 of Pension Regulations, his claim has correctly been rejected. Learned counsel for the respondents initially opposed the entitlement of disability based on policy, but subsequently acceded that in similar cases, various benches of Armed Forces Tribunal have granted disability pension

and the case of the applicant is squarely covered by those judgments, hence he is entitled to grant of disability pension.

6. On careful consideration of the facts and circumstances of the case, we find that since the applicant was enrolled in a medically fit condition and was discharged in low medical category after serving for over 22 years and the respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment, the disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264 and as such the applicant is entitled for grant of disability pension.

7. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December.

8. Keeping in view the discussion above, the applicant is considered entitled for grant of disability pension as also the benefit of rounding off of his disability pension.

9. Accordingly, the Original Application No. 326 of 2016 is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 40% for life which would stand rounded off to 50% for life from the date of discharge. 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 @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

Dated : March 2018
Ukt/-

(Justice S.V.S. Rathore)
Member (J)