

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 231 of 2016

Friday, this the 27th day of April, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

Colonel Ram Vishwas Singh (Retired) (IC No. - 41868P)
S/O Bhagwan Bux Singh, Resident of F-129 A, Near
Millennium School, South city, Raebareli Road, Lucknow
- 226025. Applicant

Ld. Counsel for the Applicant : **Shri A.K. Srivastava,**
Advocate.

Versus

1. Union of India, through the secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi - 110011.
3. Principal Controller of Defence Account (Officers), Golibar Maidan, Pune.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal, Advocate,**
Addl. Central Govt. Standing Counsel
assisted by **Maj Salen Xaxa,**
OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for the following relief.

“(a) Issue/Pass an order or direction of appropriate nature to quash/set-aside rejection of the disability pension claim of the applicant vide Army HQ letter dated 18.07.2014 and noting sheet dated 19.08.2015, annexed as Annexure No. A-1 & A-2 respectively.

“(b) Issue/Pass an order or direction of appropriate nature to the respondents to give the benefits of the disability pension duly “rounded off” to 50% to the applicant as provided vide Government of India, Ministry of Defence letter No. 1 (2)/97/D (Pen-C) dated 31.01.2001, annexed as Annexure No. A-13, supported by the position held by the Supreme Court in the case of J K S Bhuttar & Ors, annexed as Annexure No. A-14.

“(c) Issue/Pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.”

2. The facts in nutshell are that the Applicant was commissioned in the Indian Army on 08.06.1984 and was discharged on 31.01.2011 on reaching the age of

superannuation. Before discharge, he was brought before the Release Medical Board and was found in Medical Category SHAPE-1. The Applicant was re-employed in Army Service on 15.03.2011 at Leh and was discharged from re-employment on 06.01.2014. Before discharge, he was brought before the Release Medical Board (RMB) which found him suffering from **(1) PRIMARY HYPERTENSION and (b) DM TYPE ii** and assessed his disabilities as 30% and 20% for life respectively. However, his first disability of 30% was found to be aggravated by RMB where as his second disability was opined to be neither attributable to nor aggravated by military service. The applicant claims that his re-employment was curtailed to 03 years against entitlement of four years. Additionally his claim for disability element of pension was rejected by 1 HQ of MoD (Army) ADG MP-6 (8) vide letter dt 18.07.2014. It is in this backdrop that the present O.A has come to be filed.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. The learned counsel for the Applicant submits that the aforesaid disabilities were persisting since 1990 even before re-employment and had not suddenly occurred, additionally one of his disabilities is held as aggravated by RMB hence he is entitled to disability pension.

5. Per contra, it is argued that as per para 25 (a) of SAI 11S/80 a re-employed officer whose re-employment is terminated on account of a disability attributable or aggravated by service, will be granted disability element of disability pension. In the instant case of the applicant, it is contended, his re-employment was not terminated on account of disability which started after re-employment, hence he is not entitled for grant of disability pension for PRIMARY HYPERTENSION suffered by him during re-employment.

6. After considering all issues, we have to tried understand the status of a re-employed officer. As per facts which are on record & have emerged during hearing following aspects of a re-employed officer are clear.

(a) Re-employment of Army Officers upto Colonel rank and upto the age of 57/58 is required to cater for short fall of large number of officers in Army.

(b) The re-employed officers are re - employed in the ranks lower than the one they held at the time of retirement.

(c) They are subject to Army Act 1950 and all rules as applicable to a Regular Army Officer are by and large applicable on re-employed officers.

7. In this particular case there is no dispute that the RMB has held his First disability i.e. Primary hyper tension as aggravated

by military service and that as per Pension Regulation for Army (2008) Part - I which is also applicable to re-employed offr, the applicant is therefore prima facie eligible for disability pension. The respondents have however quoted para 25 (a) of special Army Instructions 1/S/80 to deny the disability pension. Para 25 (a) reads as follows:-

" Disability pension:

(i) Subject to the same general conditions as are applicable to Permanent commissioned Officers on active list, a re-employed officer whose re-employment is terminated on account of a disability attributable to, or aggravated by military service, will be granted a disability element of disability pension at the same rates as for a PC officer. Those who had retired with a pension which is held in abeyance during the period of re-employment will be eligible for restoration of that pension.

(ii) The grant of Constant Attendance allowance will be regulated as for PC officers."

8. Since the applicant was ab initio eligible for 04 years of re-employed service but the same was cut down to 03 years due to his disability therefore we are of the considered view that the applicant is deemed to be invalidated out in light of regulation 95 of Pension Regulation of the Army (2008) Part I. Therefore the contention of the respondents that since the services of the applicant was not terminated during his re-employment hence he is not eligible for disability pension is not sustainable. Even otherwise the legal position on attributability has been amply clarified & amplified by the Hon'ble Apex Court in the cases of **Dharamvir Singh vs. Union of India and Others**, reported in (2013) 7 SCC 316 and **Sukhvinder Singh vs. Union of**

India & Ors, reported in (2014) STPL (WEB) 468 SC. These judgments have come after the issuance of SAI 1/S/80 for re-employed officers who for all purposes are Army Officers under Army Act 1950. Thus in our considered opinion the SAI 1/S/80 does not have the statutory power to arbitrarily stop the flow of benefits which flow towards the applicant due to the above two judgments of the Hon'ble Apex Court. In addition we are also of the opinion that binding re-employed officers with Army Act 1950, like serving officers & thereafter depriving them the benefits of disability pension similar to serving officers is violative of Article 14 of the Constitution of India.

9. As a corollary to our detailed analysis as also views recorded in preceding paragraphs, we cannot but hold that the applicant was discharged from re-employment in the Army service on medical ground before completion of the term of engagement as per entitlement. It is further held that his tenure of engagement was palpably cut short in view of his invalidment arising out of invaliding disease '**primary hypertension**'. Consequently, he could not continue till 04 years. It is further held that the applicant was re-enrolled in Army service not on casual and contractual basis for a fixed term of tenure as claimed on behalf of the respondents. On the contrary, it is established from the circulars and instructions issued by MOD that the service of the applicant in re-employment was regulated as per revised norms and procedure

specifying maximum age of re-employment. Accordingly, it is held that the applicant was discharged from service before completion of his term of engagement and invariably prior to completion of four years of service, even though all other eligible criteria barring the required standard of medical fitness were satisfied. It is therefore held that the applicant is entitled to Disability Pension.

10. The issue of rounding off is no more res integra. 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 & Sukhvinder and 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, 2014. In light of above judgments the applicant is entitled to 30% of disability pension for life rounded off to 50% of Disability Pension for life.

11. As a result of foregoing discussion, the O.A is **allowed** and the applicant is held entitled to disability pension at the rate of 30% for life which shall stand rounded off from 30% to 50% for life from a date three years prior to the date of filing this O.A. The date of filing O.A. is 05.04.2016. 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.

12. Registry is directed to provide copy of this order to the Ld. Counsel for the respondents for onward communication to ensure compliance.

13. No order as to cost.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: April, 27, 2018
MH/-