

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 448 of 2017**Wednesday, this the 30th day of May, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**Kundan Singh No. 4185571/Ex/RACT S/o Shri Pratap Singh, R/o
Village Malla Jhula, P.O. Pamtori, (Thal) District - Pithoragarh
(Uttarakhand). **..... Applicant**Ld. Counsel for the Applicant : **Shri Kishore Rai,
Advocate.**

Versus

1. Union of India, Minsitry of Defence through its Secretary, South Block, New Delhi 110011.
2. C.D.A (P) Draupadighat, Allahabad, (U.P).
3. Addl Dte Gen Personnel Services, Adjutant General’s Branch, Integrated HQ of MoD (Army) DHQ P.O. New Delhi-110011
4. Senior Record Officer, Kumaun Regiment, Ranikhet.

.....RespondentsLd. Counsel for the Respondents. : **Shri Bhanu Pratap Singh,
Addl. Central Govt. Standing Counsel****ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

*“(i) A direction to quash the order dated 17.10.2016 passed by respondent no.4 (contained as Annexure No.8 to this original application) or to**(ii) A direction to grant disability pension to the applicant as per disability pension rules, or to*

(iii) To summon the entire records of the applicant pertaining to computation of his disability pension

(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. In brief, the facts of the case as averred in the OA. are that the applicant was enrolled in the Indian Army on 11.06.1993. While going through his training on 24.01.1994 he was admitted in Military Hospital Bareilly and detected a case of pulmonary tuberculosis. He was treated as M.H. Bareilly upto July, 1994. On 01.09.1994 in pursuance of the report of Invaliding Board the applicant was invalided out from service under medical category “EEE”. The IMB has considered the disability of the applicant as neither attributable to nor aggravated by military service and granted 100% disability for 02 years. According to the IMB the disability of the applicant existed before his enrolment in service, hence, he was not entitled to disability pension/ AGI benefits. The applicant approached the first appellate authority for grant of disability pension, which was rejected vide letter/ order dated 22.04.2008, against which the applicant preferred second appeal on 10.05.2010 but the grievance of the applicant was not redressed.

3. **Per contra**, the respondents in their counter affidavit have denied the claim of the applicant on the ground that since the disability of the applicant was assessed as neither attributable to nor aggravated by military service, he was not entitled to the disability pension.

4. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the material on record.

5. The proposition of law with regard to disability pension has been settled by the Hon'ble Supreme Court and is no more a *res integra*. Hon'ble the Apex Court in the case of **Dharamvir Singh versus Union of India and others**, reported in (2013) 7 SCC 316, has observed the provisions of the Pension 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 invalidated 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).”

6. In the present case, it is undisputed that at the time of entry in service, the applicant was found to be medically fit. Even assuming for the sake of arguments that onset of the disease was detected immediately after six months of his enrolment, it cannot be presumed that the applicant was suffering from tuberculosis at the time of enrolment because it is a matter of common knowledge that a person suffering from such a dreaded disease could have undergone strenuous military training for more than six months and passed all the mandatory physical fitness tests without the disease having been detected. The respondents have failed to bring on record any document to suggest that the applicant was under treatment at the time of entry for such a disease or by hereditary he was suffering from such disease. In the absence of any note in the service record at the time of joining of applicant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the applicant's acceptance for Army service. Additionally, the Invaliding Medical Board has not recorded any logical and meaningful reason as to why the disease could not be detected at the time of enrolment.

7. We have given our anxious consideration to the pleadings from both sides and material on record. We are of the considered opinion that since the applicant had completed six months of initial Military training successfully, hence it cannot be said that the disease Pulmonary Tuberculosis pre-existed before the applicant was selected and enrolled. Even otherwise, the infection span of Pulmonary Tuberculosis is very rapid and can infect a person in a matter of few weeks. Hence, considering all issues, we consider the disease of the applicant as attributable to military service.

8. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The respondents are directed to grant disability pension to the applicant at the rate of 100% for two years from the date of discharge i.e. 01.09.1994. The respondents are also directed to conduct Re-Survey Medical Board for re-assessing the present medical condition of the applicant. Further entitlement of disability pension shall be subject to the outcome of Re-Survey Medical Board. The respondents are further directed to comply with the order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rates of 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: May 30, 2018

JPT

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