

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 10 of 2019**Wednesday, this the 15th day of May 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No. 15772194-H Ex Nk (GNR), Bipin Kumar, S/O Satya Prakash Srivastava, R/O H.No. 592K/765, Subhani Khera, Telibagh, Lucknow, U.P. (India).

.....Applicant

Ld. Counsel for the : **Shri Manoj Kumar Awasthi,**
Advocate.
Applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi.
3. The Officer-in-Charge, Sena Vayu Raksha Vayu Raksha Abhilekh, Army Air Defence Records, PIN-908803, C/O 99 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. :**Shri Virendra Singh,**
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:-

- (a) *To issue/pass an order or direction to set-aside/quash the letter dated 16.01.2017 passed by respondent No-3.*
- (b) *To issue/pass an order or direction to the respondents to grant the disability element of disability pension to the applicant from date of discharge i.e. 31.12.2016 in light of Hon’ble Apex Court judgment Sukhvinder Singh vs Union of India & Others.*
- (c) *To issue/pass an order or direction to the respondents to grant rounding off’ the disability pension from date of discharge @ 50% to 75% in light of Apex Court case i.e. Union of India versus SRam Avtar.*
- (d) *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (e) *To allow this original application with costs.*

2. Brief facts of the case giving rise to the application are that the applicant was enrolled in the Indian Army on 11.02.2000 and after having completed 16 years, 10 months and 21 days of service he was discharged from service in low medical category P2 (permt) on 31.12.2016 in terms of Rule 13 (3) III (iv) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held at 159 General Hospital (GH) on 08.06.2016 which assessed the applicant to be suffering from ‘Spinal Intramedullary Sol (Optd) (M 54.5)’ @ 50% for life and opined it to be neither attributable to nor aggravated by military

service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 16.01.2017. First Appeal against rejection of disability pension claim was preferred on 27.02.2018 which is still pending, hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by the applicant after joining the service should be considered as attributable to or aggravated by military service in terms of para 423 (c) of Pension Regulations for the Army and the applicant should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that the applicant, during September 2007 while posted at Jodhpur, was diagnosed to be suffering from 'Spinal Intramedullary Sol (Optd) (M 54.5)'. This disease he feels is due to stress and strain related rigors of military service. He concluded by pleading for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension.

He further submitted that the applicant was operated upon in Command Hospital, Pune for his disability and after discharge from there he was placed in low medical category P2 (T-24). On subsequent re-categorization Medical Board he was placed in low medical category P2 (P) w.e.f. 03.12.2008 and remained in service till the date of his superannuation from Army i.e. 01.01.2017 (FN). It was further submitted by Ld. Counsel for the respondents that due to prevalent policy on retention of P2 (P) category personnel the applicant was permitted by the Commanding Officer to serve in low medical category but due to domestic problems the applicant had submitted an application dated 12.07.2015 for premature discharge from service on extreme compassionate grounds which was accepted vide order dated 23.03.2016 with directions to proceed on discharge w.e.f. 01.01.2017 (FN). It was further averred that the disability of the applicant was viewed as NANA and not connected with service by the duly constituted RMB. The same was upheld by the competent authority while rejecting his disability pension claim. The Ld. Counsel for the respondents orally admitted that disability pension is granted to a person who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or above, but in the instant case the disability of the applicant was regarded as NANA by the RMB hence the

competent authority had rejected his disability pension claim. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection order of disability pension claim. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

6. After VIth Central Pay Commission i.e. w.e.f. 01.01.2006, military personnel proceeding on discharge on compassionate grounds due to own request are also eligible for disability pension hence the fact that the applicant has proceeded on discharge at own request is prima facie not a bar to his eligibility to receive disability pension. Additionally, the law on attributability/aggravation of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** reported in (2013) 7 Supreme Court Cases 316. 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 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)."*

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing a cryptic sentence that the disability is not connected with military service vide AFMSF-15 dated 02.01.2000. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had started in September 2007 i.e. after about seven years of his service. We are therefore of the considered opinion that the benefit of doubt should be given to the applicant in view of **Dharamvir Singh** (supra) and the disability of the applicant i.e. 'Spinal

Intramedullary Sol (Optd) (M 54.5)' should be considered as aggravated by military service.

8. In view of the above, we are of the view that the applicant is held entitled to 50% disability element for life which would stand rounded off to 75% disability element for life in terms of ***Union of India and Ors vs Ram Avtar & Ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 16.01.2017 is set aside. The applicant's disability 'Spinal Intramedullary Sol' is considered to be aggravated by military service and he shall be entitled to disability element @ 50% for life to be rounded off to 75% for life w.e.f. 01.01.2017. The respondents are 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: May, 2019
gsr