

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 171 of 2019

Thursday, this the 23rd day of May, 2019

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)"

Shit Basant Yadav (No. 1465649W Ex Nk), son of Late Chhedi Yadav, resident of House No 587A/493, C-Block, Gandhi Nagar, Telibagh, Lucknow (Uttar Pradesh)-226025.

..... Applicant

Ld. Counsel for the : **Shri Yashpal Singh**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Directorate General, Personal Services/Adjutant General's Branch, Integrated Headquarters of ministry of Defence (Army), PIN-90256, C/O 56 APO.
3. Officer-in-Charge Records, Bengal Engineers Group, PIN-900477, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri GS Sikarwar**,
Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal B.B.P. 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) *Issue/pass an order or direction setting aside the letter/order dated 05.05.2006 passed/issued by the Additional Directorate General, Personal Services/adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army) and communicated by the letter dated 10.05.2006 (Annexure No. 1 to the Original Application) rejecting the claim of the applicant for grant of disability pension, after summoning the relevant original records; and reassess the disability and grant disability pension extending the benefit of rounding off from due date including arrears thereof with interest.*
- (ii) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (iii) *Allow this Original Application with cost.*

2. In the instant case, a preliminary objection was raised by respondents that the applicant had knocked the door of this Tribunal after a delay of 11 years, 10 months and 26 days. After considering the justification for delay this Tribunal vide order dated 28.02.2019 has condoned the delay.

3. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 11.09.1980 and was discharged from service on 30.09.2002 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Command Hospital, Lucknow on 27.04.2002 assessed his disability ‘**Schizophrenia-295**’ @ 20% for two years but opined the disability to be neither attributable to nor aggravated by military service (NANA). The initial claim of disability pension was rejected vide order dated 28.09.2003. Thereafter first appeal preferred by the applicant against rejection of disability pension claim was also rejected vide

order 05.05.2006. It is in this perspective that the applicant has preferred the present O.A.

4. Ld. Counsel for the applicant pleaded that at the time of enrolment, the applicant was found medically and physically fit for service in the Army and there was no note in the service documents that he was suffering from any disease at the time of enrolment in the Indian Army. The disease of the applicant was contracted during the service and has for the first time started in 1996, hence it is attributable to and aggravated by military services. The Ld. Counsel for the applicant further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is also entitled to disability pension and its rounding off.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB, hence the applicant is not entitled to disability pension. Referring para 173 of Pension Regulations for the Army, 1961 (Part-I), Ld. Counsel for the respondents further submitted that an incumbent is granted disability pension when invalidated out of service on account of disability which is attributable to or aggravated by military service and is assessed @ 20% or over. In the instant case since the disability of the applicant i.e. 'Schizophrenia-295' has been assessed by the RMB to be neither attributable to nor aggravated by military service (NANA) hence he is not entitled to disability pension. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings as well as the records. Thus only question which needs to be answered by us is whether the disability of the applicant is attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of 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 invalided 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)."

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing that the disability 'Schizophrenia-295' is not connected with service. Further, on careful perusal of the opinion of Classified Specialist Psychiatry dated 18.04.2002, we find that in the said opinion no cause of disease or comments on attributability has been given by the Specialist. Thus on one hand we note that the disease has started after 16 years of military service and on the other hand we find that the RMB has given only one cryptic sentence to justify NANA i.e. 'not connected with service, cause as per specialist opinion'. We have noted that the specialist opinion as available in RMB is silent on cause of disease, attributability and as to why this disease could not be detected at the time of enrolment. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of the law on attributability being settled by the Apex Court vide ***Dharamvir Singh vs Union of India & Ors*** (supra) and thereafter the disability of the applicant should be considered as aggravated by military service.

9. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned orders are set aside. The applicant shall be entitled to disability pension @ 20% for two years w.e.f. the date of discharge i.e. 30.09.2002. However, due to law of limitations the applicant shall not be eligible to receive arrears of disability element for two years after his discharge. The applicant is already in receipt of service element for life. Additionally, the respondents are required to carry out a fresh RSMB for the applicant for his disability i.e.

'Schizophrenia-295'. The applicant's future entitlement to disability element will depend on the outcome of his RSMB. 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. 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.

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

Dated: May, 2019

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