

Court No.2

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

Transferred Application No. 11 of 2016

Wednesday, this the 09th day of November, 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No 14649835M Cfn Anil Kumar s/o Vishnu Prasad
Permanent address village and post Bhilkheri Tehsil
Sujalpur District- Shajapur (MP).
Local Address: Village & Post Tatarganj (Jasra), Tehsil-
Bara, District-Allahabad.

.....Petitioner

Ld. Counsel for: **Shri S.N. Awasthi, Advocate**
the petitioner

Versus

1. Union of India through Secretary Ministry of Defence,
New Delhi.
2. Major, Senior Record Officer, for OIC Records, EME
Records, Secunderabad-21
3. Capt., Quartermaster, 65 Armed Regt.
4. Chief of the Army Staff, Army HQ, New Delhi.

...Respondents

Ld. Counsel for the Respondents **Shri Sidharth Dhaon, Advocate**
Assisted by Maj Soma John, OIC
Legal Cell.

ORDER

1. Being aggrieved with the denial of disability pension the petitioner had preferred Writ Petition No 23195 of 2008 in the High Court of Judicature at Allahabad, which on establishment of the Tribunal has been transferred under Section 34 of the Armed Forces Tribunal Act, 2007 to this Tribunal and re-numbered as T. A. No. 11 of 2016.

2. The petitioner was recruited as soldier on 11.03.2002 in the Indian Army and thereafter completed training of Vehicle Mechanic and was engaged in repairing of fighting vehicles (Tanks).

On 28.02.2004 when the petitioner was posted in 65 Armd Regt Kaluchak (Jammu & Kashmir), he suffered pain in his right thigh and was sent for treatment to Military Hospital, Kirkee, Pune. After treatment the doctor placed him in medical category 'C' for a period of three months vide order dated 22.11.2004 and thereafter the petitioner was referred to Military Hospital, Meerut Cantt (U.P.) for further treatment. The Military Hospital, Meerut Cantt referred the petitioner to Military Hospital R&R, Delhi Cantt where after getting treatment the petitioner recovered from the medical problems. However, by an impugned order dated 15.02.2005 the petitioner was invalided out of service on account of medical disability. According to report of Invaliding Medical Board (IMB) as stated in para 4 of counter affidavit, the petitioner was placed in low medical category 'EEE' due to 'CAVERNOUS HEMENGIOMA (RT) THIGH'. The Invaliding Medical Board found the disability as

aggravated by military service and assessed the same at 20% for life. In spite of the report of the Invaliding Medical Board the petitioner was not paid disability pension hence he preferred appeal dated 20.02.2006.

3. The defence as set up by the respondents in para 6 of the counter affidavit is that the findings of the medical board are recommendatory in nature and can be reviewed by the competent medical authority i.e. MA(P)/Joint Director AFMS (Pensions). Keeping in view the report of Joint Director as alleged by Ld. Counsel for the respondents, disability pension was refused. It was submitted that the appellate authority has recorded a finding that disability co-related with military service and was neither aggravated nor attributable by it.

4. We have heard Ld. Counsel for the parties and considered the rival submissions at length.

5. It has not been disputed by the respondents that at the time of recruitment (entry level) the petitioner was found to be fit and having the standard of medical fitness in accordance with the norms and having no deficiency the petitioner was inducted in military service as soldier.

6. Para 95 of the Pension Regulations for the Army, Part-I, 2008 on the basis of which the petitioner claimed disability pension is reproduced hereunder :

“95. Individual who is placed in a low medical category (other than ‘E’) permanently and who is discharged because no alternative employment in his own

trade/category suitable to his low medical category could not be provided or who is unwilling to accept the alternative employment or who having been retained in alternative appointment is discharged before completion of the engagement, shall be deemed to have been invalidated out of service under the Entitlement Rules for Casualty Pensionary Awards, 2008 as laid down in Appendix IV to these Regulations. This provision shall also apply to individual who is placed in a low medical category while on extended service and is discharged on that account before completion of the period of his extension.”

A plain reading of the above Regulation reveals that defence personnel who are below officer rank and unwilling to accept alternative appointment is also entitled to disability pension.

7. However, the question of grant of disability pension is no longer res integra. The Hon'ble Supreme Court in the case of ***Dharmvir Singh vs. Union of India & others***, reported in 2013 AIR SCW 4236, has held that in case at entry level, disability is not found in relation to any individual and later on during course of service, he suffers from any disease or disability, it shall amount to have occurred during the course of service on account of army service and it necessarily has to be treated as attributable to and aggravated by military service and the disability pension has to be granted to such an individual. Relevant portion of the judgment contained in Para 28 is reproduced as under:

“28. A conjoint reading of various provisions, reproduced above, makes it clear that: (i) 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 above, the question whether a disability is attributable to or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173). (ii) A member is to be presumed in sound physical and mental condition upon entering 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 r/w Rule 14(b)]. (iii) 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). (iv) 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 4 conditions were due to the circumstances of duty in military service. [Rule 14(c)]. (v) 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. [14(b)]. (vi) 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. [14(b)]; and (vii) It is mandatory for the Medical

Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above."

8. Aforesaid proposition of law, as reproduced hereinabove, has again been followed by the Hon'ble Supreme Court in the case of ***Sukhvinder Singh vs. Union of India & Ors.***, reported in (2014) STPL (WEB) 468 SC.

In view of above, admittedly the applicant, who has suffered disability during the course of army service, is entitled for grant of disability pension.

9. The Ld. Counsel for the petitioner made an oral prayer for rounding off benefit of his disability element of pension. In ***Union of India and Ors vs. Ram Avtar & ors*** (Civil Appeal No 418 of 2012 dated 10th December 2014) the Hon'ble Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category. In view of the ratio of the judgment the applicant is also entitled to the benefit of rounding off his disability element of pension, which has been assessed by the Release Medical Board at 20% to 50%.

10. In view of observations made hereinabove we are of the considered view that the petition deserves to be allowed. It is accordingly **allowed**. Impugned order dated 15.02.2005 is hereby

set aside. The disability pension is enhanced from 20% to 50% for life. The respondents are directed to pay the same to the petitioner from the date of discharge from service along with interest @ 10% per annum. Let the entire exercise be completed and arrears be paid to the petitioner not later than four months from today.

11. Respondents counsel as well as OIC Legal Cell shall communicate the order to the competent authority forthwith.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D. P. Singh)
Member (J)