

A.F.R.

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No 514 of 2020

Monday, this the 15th day of November, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 4068180L Nk Dalip Singh
S/o Nain Singh
Ex Rfn 127 (Territorial Army) Environment Garhwal Rifles
C/o 56 APO
R/o House No. B 114, Shivaji Colony Dhandera,
PS – Milap nagar, Distrcit - Haridwar – 247666, Uttarakhand
..... Applicant

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Senior Record Officer, 127 (Territorial Army) Environment Garhwal Rifle, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,
Central Govt Counsel.

ORDER

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

- i. A direction to the respondents for grant of disability pension on account of disability suffered during military service w.e.f. 31.10.2018.
- ii. To summon the entire records of the applicant pertaining to computation of his disability pension.

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

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 29.11.1984 and was discharged from service on 30.11.2006 (AN) on completion of terms of engagement under rule 13 (3) III (i) of Army Rules, 1954. Accordingly, applicant is in receipt of service pension w.e.f. 01.12.2006 vide PPO dated 04.10.2006. Thereafter applicant was re-enrolled into 127 Infantry Battalion (Territorial Army) Ecological, Garhwal Rifles on 06.02.2007. The applicant was placed in low medical category P3 (T-24) for six months w.e.f. 17.05.2016 for diagnosis “Primary Hypertension” and subsequently he was placed in P2 (Permanent) w.e.f. 25.05.2018. The applicant was brought before RMB on 24.10.2018 and RMB assessed his disability @ 30% for life as aggravated by military service. Accordingly, applicant was discharged from TA service w.e.f. 01.11.2018 under Territorial Army Rule 14 (b) (iv) of Territorial Army Regulations 1948 (Revised Edition 1976). The claim of the applicant for grant of disability pension was rejected by the respondents. Being aggrieved by the denial of disability pension, the applicant has preferred the present O.A.

3. Learned Counsel for the applicant submitted that at the time of enrolment in Territorial Army, the applicant was found mentally and physically fit for service and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Territorial Army. The disease of the applicant was contacted during the service, hence, it was assessed @ 30% for life and considered as

aggravated by Military Service by RMB. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. The Medical Board has opined that disability suffered by the applicant is due to stress and strain of service in field area and therefore, applicant is entitled for disability benefits under the provisions of para 173 of Pension Regulations for the Army, 1961 (Part-1).

4. Learned Counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, (Civil Appeal No. 4949 of 2010, arising out of SLP No. 6940 of 2010) and ***Sukhvinder Singh vs. Union of India & Others*** (Civil Appeal No 6505 of 2010) and pleaded that applicant be granted disability pension as per recommendations of RMB duly rounded off to 50%.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant has been discharged from service in low medical category P2 (Permanent) for the disability "**Primary Hypertension**" under Territorial Army Rule 14 (b) (iv) of Territorial Army Regulations 1948 (Revised Edition 1976). As per Govt. of India, Ministry of Defence letter dated 30.10.2018, applicant is not entitled to any pensionary benefits on release/invalidment for the service rendered in Territorial Army. Therefore, his case was not processed further for grant of pensionary benefits in terms of letter dated 30.10.2018. Hence, applicant is not entitled for 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. The only question which needs to be answered is whether the higher competent authority has power to overrule the opinion of the RMB for the disability?

7. This is a case where RMB had conceded the disability of applicant "**PRIMARY HYPERTENSION**" @ 30% for life as attributable to military service. However, higher competent authority has rejected the claim of applicant on the ground that disability of applicant has been viewed as attributable to military service but as per Govt. of India, Ministry of Defence letter dated 30.10.2018, applicant has been denied disability pension for the service rendered in Territorial Army. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command without physical medical examination of the patient by a higher Medical Board. In this context the operative portion of the judgment of Hon'ble Apex Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993 is quoted below:-

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be

constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

8. Thus, in sum and substance we set aside the decision of higher competent authority overruling the opinion of RMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of RMB for grant of disability element and are of the considered opinion that the applicant was entitled to disability element for his disability “**PRIMARY HYPERTENSION**” @ 30% for life from the date of discharge alongwith benefit of rounding off as per Govt of India, Ministry of Defence letter dated 31.01.2001.

9. We observe that it is no where mentioned in the letter dated 30.10.2018 that in case of invalidation from the service the soldier would not be entitled to disability element. The letter simply bars getting service element and not disability element. Therefore, the applicant will not be entitled to service element for the service rendered in Territorial Army as per Govt. of India letter dated 30.10.2018, however, he will be entitled to disability element of Territorial Army service from his date of discharge. Para 4 (e) of the letter dated 30.10.2018 is reproduced as under :-

“(e) **Pension.**

- (i) *Ex-junior Commissioned officers, Ex-Servicemen and Ex-women employees (including premature retiree) of MoEF&CC and State Forest Department enrolled in the Battalions, will not be entitled to any pensionary benefits on release/invalidment, for the service rendered in Infantry Battalions (TA) Ecological units.*
- (ii) *Pension entitlement of Ex-Servicemen both of Regular Army and Territorial Army and Ex-women employees (including premature retiree) of MoEF&CC and State Forest Department (if any) earned in their previous service, will remain untouched and will ignored in fixing their pay and allowances.”*

10. Resultantly, the O.A. deserves to be partly allowed, hence **partly allowed**. The impugned order passed by the respondents is set aside and the original opinion of RMB is restored. The applicant's disability "**PRIMARY HYPERTENSION**" is to be considered as attributable to military service @ 30% for life in line with RMB recommendations. The applicant is entitled to disability element @ 30% for life from the date of discharge from service from Territorial Army duly rounded off to 50% from the date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: November, 2021
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