

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 1251 of 2023

Wednesday, this the 23rd day of October, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Nk Jitander Kumar (Retd) (Ser No. 15206038-W)
 R/o Vill/Moh – Badashahpur, PO – Lisarh, Tehsil – Shamli,
 Distt – Shamli (U.P.) – 247776

.... Applicant

Ld. Counsel for the Applicant : **Shri Tatsat Shukla,**
Shri Dhiraj Kumar &
Shri Rahul Pal, Advocates

Versus

1. Union of India, Through Secretary, Ministry of Defence
Room No. 101A, South Block, DHQ PO – New Delhi, PIN
110011.
2. Chief of the Army Staff (through Dir PS-4), AG's Branch,
IHQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Record Officer, Artillery Records, Nasik Road Camp, Distt
– Nasik (Mah), PIN-422102.
4. Principal Controller, Defence Accounts (Pension),
Draupadi Ghat, Allahabad (UP) – 211012.

... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
 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, whereby the applicant has sought following reliefs:-

- “(a) To quash and set aside the Impugned Order dated 06 Jan 2022 to the extent they deny the grant of disability element of pension to the applicant;
- (b) To direct the respondents to grant the disability element of pension @ 20% broad-banded to 50% with interest @ 12%.p.a. wef date of discharge, by treating the disabilities as attributable to and/or aggravated by military service.
- (c) To pass any other order(s) or/and direction(s) in favour of the applicant which may deem just and proper under the facts and circumstances of the case in the interest of justice.

2. Brief facts giving rise to this application are that the applicant was enrolled in the Indian Army on 16.07.2003 and was discharged from service on 31.08.2021 in low medical category being unwilling to continue in service under Rule 13 (3) III (iii) (a) of Army Rules, 1954 after rendering more than 18 years of service. The Release Medical Board (RMB) assessed his disability “**DEEP VEIN THROMBOSIS LEFT LOWER LIMB (ICD-N 182.42)**” @ 15% for life and considered it neither attributable to nor aggravated by military service (NANA). The disability pension claim of the applicant was rejected vide order dated 06.01.2022. First appeal of the applicant dated 02.02.2023 has not been decided by the respondents being time barred. The applicant has been granted invalid pension for life w.e.f. 01.09.2021 vide PPO No. 232202102540 dated 11.03.2022. The applicant has filed

present Original Application for grant of disability element of disability pension and its rounding of benefit.

3. Learned Counsel for the applicant submitted that the applicant was enrolled in the Indian 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 joining. The applicant continuously served for 10 years from July 2007 to June 2017 in CI Ops Area, High Altitude Area and Field Area and the disease '**Deep Vain Thrombosis left Lower Limb**' was diagnosed in the month of Aug 2017 in Military Hospital, Meerut which was assessed @ 15% for life as NANA and disability pension claim of the applicant was rejected by the respondents being disability NANA and below 20%. The minimum assessment in **Peripheral Vascular Disease (Deep Vein Thrombosis)** as per Chapter VII of GMO (MP) 2008 is 20% and it can increase further based on the functional capacity of the part and limb affected. Therefore, applicant's disability assessed @ 15% for life by the RMB cannot be assessed less than 20%. Therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service in view of **Dharamvir Singh** case and applicant should be made entitled to disability pension as per Pension Regulations for the Army, 2008 (Part-1). Therefore, applicant deserves for 20% disability pension to be rounded off to 50% in

view of the Hon'ble Apex Court judgment in the case of Ram Avtar.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4949/2013 ***Dharamvir Singh v. Union of India*** decided on 02.07.2013, Civil Appeal No. 5605 of 2011, ***Sukhvinder Singh vs Union of India***, decided on 25.06.2014, ***Union of India & Ors vs. Manjit Singh***, JT 2015 (5) SC 255 and this Tribunal judgment in OA No. 66/2023, ***Ex Sub Rakesh Kumar Dikshit vs. Union of India & Ors***, decided 09.08.2023 and pleaded to grant disability pension to the applicant treating it @ 20% in terms of Para 63 (e) of Chapter VII of Guide to Medical Officers, 2008 duly rounded off to 50% for life in terms of **Ram Avtar** case.

5. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of applicant's disability is 15% for life, i.e. below 20% and applicant has been discharged from service in low medical category being unwilling to continue in service under Rule 13 (3) III (iii) (a) of Army Rules, 1954 after rendering more than 18 years of service. The Release Medical Board (RMB) assessed his disability "**DEEP VEIN THROMBOSIS LEFT LOWER LIMB**" @ 15% for life and considered it neither attributable to nor aggravated by military service (NANA) as onset in peace and not aggravated by prolonged standing, marching running, nor associated with military service vide Para 63 (e) of

GMO-2008. The applicant has already been granted invalid pension for life w.e.f. 01.09.2021 vide PPO No. 232202102540 dated 11.03.2022. The applicant is not fulfilling the conditions for grant of disability element of pension under the provisions of Regulation 81 of the Pension Regulations for the Army, 2008 (Part-1) and therefore, he is not entitled for disability element and its rounding off benefit. The competent authority has rightly denied the benefit of disability element of pension to the applicant. He pleaded for dismissal of Original Application being devoid of merits.

6. We have given our considerable thoughts to both sides and have carefully perused the records. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of three folds:-

- (a) Whether the disability of the applicant is above or below 20%?
- (b) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability pension?

7. We have noted that the applicant's disability has been assessed @ 15%, i.e. less than 20%. In this regard, after examination of the various provisions of Guide to Medical Officers,

2008, amended Chapters VI & VII, we find that Deep Vein Thrombosis (DVT) has been defined in para 63 (e) of Chapter VI where causes of DVT have been very clearly mentioned. In Para 21 of Chapter VII of Guide to Medical Officers, percentage disability for Deep Vein Thrombosis has been shown as minimum 20%. This means that percentage disability of any Peripheral Vascular Diseases should be assessed not less than 20%, i.e. minimum and it can be increased further based on the functional capacity of the part and limb affected. Therefore, in the instant case we come to the conclusion that there should have been no reason for the Release Medical Board to have assessed his disability Deep Vein Thrombosis @ 15% which is in contravention to the laid down principles of Guide to Medical Officers, 2008.

8. 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 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 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)."

9. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability “**DEEP VEIN THROMBOSIS LEFT LOWER LIMB**” is neither attributable to nor aggravated (NANA) and not associated with service conditions on the ground of onset of disability in 2017 while posted in Muzaffarnagar (Peace location), therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we

are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 16.07.2003 and the disability has started after more than 14 years of Army service i.e. in the year 2017. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh*** (supra), and the disability of the applicant should be considered as aggravated by military service.

10. In view of above, disability of the applicant “**DEEP VEIN THROMBOSIS LEFT LOWER LIMB (ICD-N 182.42)**”, assessed @ 15% for life by the RMB cannot be assessed less than 20% as per Chapters VI & VII of Guide to Medical Officers, 2008. The disability of the applicant is held as aggravated by Army Service in view of ***Dharamvir Singh*** (supra). Therefore, the applicant deserves 20% disability element for his disability **DEEP VEIN THROMBOSIS** which is to be rounded off to 50% in view of the Hon'ble Apex Court judgment in ***Union of India and Others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

11. In view of the aforesaid observation, the Original Application deserves to be allowed, hence **allowed**. The impugned order passed by the respondents is set aside. The applicant is entitled to disability element @ 20% for life duly rounded off to 50% for life

from the next date of discharge from service. The respondents are directed to grant disability element of disability pension @ 50% for life to the applicant from the next 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 from the date of this order till actual payment.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 23rd October, 2024
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(Justice Anil Kumar)
Member (J)