

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 242 of 2021**

Wednesday, this the 8th day of September, 2021

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

Sarvesh Kumar (No. 4186292H Ex Hav), son of Bhikam Singh, resident of Village – Anjani, Post Office – Anjani, District – Mainpuri (Uttar Pradesh)-205001.

..... Applicant

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

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. The Officer In-charge, EME Records, PIN-900453, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad14 (UP).

..... Respondents

Ld. Counsel for the: **Shri Amit Jaiswal**,
 Respondents Govt. Standing 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:-

(a) Issue/pass an order or direction setting aside the recommendations of the Release Medical Board held on 15.01.2019 in so far as the same hold the disability of the applicant not connected with military service; and order/letter dated 24.04.2019 passed by Records, The Kumaon Regiment rejecting the claim of the applicant for grant of disability pension, after summoning the relevant original record; and directing the respondents to consider and grant disability pension to the applicant extending the benefit of rounding off from the date of discharge including arrears thereof with interest.

(b) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstance of the case.*

(c) *Allow this Original Application with cost.*

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 12.02.1994 and was discharged from service on 31.03.2019 in low medical category S1H1A1P2(P)E1. Release Medical Board (RMB) assessed his disability "**STROKE ISCHEMIC RT MCA TERRITORY**", @ 50% for life (Net assessment qualifying for disability pension –Nil%) and opined that disability of the applicant was neither attributable to nor aggravated by military service (NANA). Applicant's disability pension claim was rejected vide order dated 24.04.2019, since disability i.e. '**STROKE ISCHEMIC RT MCA TERRITORY**' is neither attributable to nor aggravated by service and also not connected with service with net assessment of disability qualifying for disability pension as Nil for life. Applicant was advised to prefer an appeal, if not satisfied, but he did not do so. Hence this Original Application has been filed for grant of disability pension.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently during service due to participation in Operation Rhino, Operation Parakram and Operation Rakshak while in service. Further submission of learned counsel for applicant is that disability of the applicant should be considered aggravated due to exceptional stress and strain of service having served in Field/High Altitude Area. The action of the respondents in not granting disability pension to the applicant is illegal, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 50% duly rounded off to 75%.

4. On the other hand, learned counsel for the respondents opposed the learned counsel for the applicant and submitted that the applicant was discharged from service on completion of his terms of engagement in low medical category and his disability was considered as neither attributable to nor aggravated by

military service and also not connected with service with net assessment of disability qualifying for disability pension as Nil% for life by RMB and he is not eligible for disability pension. Further submission of learned counsel for the respondents is that onset of disease was in 2016, and since "individual was a chronic Bidi Smoker for 10 years, this is a risk factor for Cerebrovascular Accident (CVA), hence, disability element of pension was denied being NANA. Applicant was granted service pension vide PPO No. 169201900578 dated 03.05.2019, and he is not eligible for grant of disability element of pension under Para 53 (a) of Pension Regulation for the Army, 2008 (Part-I) which stipulates that "An individual released/retired/discharged on completion of terms of engagement limits or on attaining the prescribed age (irrespective of his period on engagement), if found suffering from a disability attributable to or aggravated by military service, may be granted disability element in addition to service pension. Therefore, in view of the above provision he is not entitled to disability element of pension as applicant's disability is not aggravated by military service. He pleaded for dismissal of O.A.

5. There would be cases where neither immediate nor prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of constitutional factors, heredity and way of life factors such as indulging in risk factors e.g. smoking. Attributability or aggravation factor cannot be granted in such cases. In the instant case, since RMB proceedings have opined that "**individual was a chronic Bidi smoking which is a risk factor for CVA**" hence, disability is to be conceded as NANA despite onset of disease having been arisen in Field/High Altitude Area. He was granted service pension from the date of discharge vide PPO No. 169201900578 dated 03.05.2019. Learned counsel for the respondents further submitted that applicant is himself responsible for this disease.

6. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability

element of pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

7. We have perused remarks of Medical Classified Specialist (Medicine & Neurology) Command Hospital (Central Command), Lucknow who has opined that “this 43 years old serving NCO, a case of Right MCA Territory. Perusal of medical documents revealed that the individual was a chronic bidi smoker.” The applicant did not abstain from smoking bidi rather he had increased intake of bidi (approx 10 per day as per opinion of the medical specialist) which has led the applicant’s disease for which the applicant is individualistic responsible.

8. Learned counsel for the respondents have relied upon judgment on similar grounds passed by the Hon’ble Supreme Court in SLP (C) No. 23727/2008 in case of **UOI vs. Damodaran AV** in which it is viewed that “***the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence***”. In another judgment on similar grounds passed by the Hon’ble High Court of Kerala at Ernakulam in WA No. 1071 of 1997 (OP No. 18002 of 1993) in case of **UOI vs. Sreekumar P**, the Hon’ble Court has viewed that :-

(a) *“the disability has been assessed by a competent expert body like the medical board whose conclusions are to be accepted as correct unless contradicted by any other medical board by cogent evidence”.*

(b) *Once the expert body like the medical Board expresses an opinion it is entitled to great weight. Unless the medical findings are utterly perverse this Court exercising jurisdiction under Article 226 of the Constitution cannot go behind the said opinion and substitute its own opinion for that of the expert body.*

(c) *This court while exercising jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Court. The findings of the expert body cannot be interfered with unless it is palpably wrong”.*

9. We have given our considerable thoughts to both sides and have carefully perused the records.

10. As per Rule 173 of Pension Regulations for the Army, 1961 (Part-1), disability pension is eligible only when the disability is assessed @ 20% or more and accepted as attributable to or aggravated by military service. Even otherwise as per Chapter V – Miscellaneous Provisions, Para 6 of Guide to Medical Officers

2002, disablement on account of abuse of tobacco cannot be considered for compensation. The relevant portion of the para reads:

“6. Compensation cannot be awarded for any disablement or death arising from intemperance in the use of alcohol, tobacco or drugs or sexually transmitted disease, as these are matters within the member’s own control.”

11. Since, applicant’s disability is considered as neither attributable to nor aggravated by military service (NANA) by RMB, applicant does not fulfil the requirement of Rule 173 of Pension Regulations for the Army, 1961 (Part-1) for grant of disability pension. The provisions of AO 9/2007 and DGAFMS Memorandum 171/2002 and Guide to Medical Officers (Military Pensioners) 2002, are also applicable in this case.

12. On the point of rounding off of disability element of pension, we are of the view that since, the applicant is not in receipt of disability element pension, the question of grant of benefit of rounding off of disability pension does not arise as averred by the applicant in Original Application.

13. In view of the discussions made hereinabove, we are of the view that applicant’s aforesaid disability is the result of his own habit of ‘bidi smoking’ which has no relation to the military service, therefore he is not entitled to disability element of pension.

14. A conspectus of above observations is that applicant has not been able to make out a case in his favour and O.A. is liable to be dismissed. It is, accordingly **dismissed**.

15. No order as to costs.

16. Pending applications, if any, are disposed off.

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

Dated: 8th, September, 2021

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