

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 52 OF 2017**Wednesday, this the 30th day of May, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 4168086 Ex Sep Bhupal Singh Jantwal son of late Shri Bachi Singh Jantwal, resident of Sujal Colony, Talli Haldwani, Bareilly Road, Haldwani, district Nainital.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar, Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Controller of Defence Account (Pension), Allahabad
3. Kumaun Regiment, Record Office, Ranikhet, District Almora.
4. Appellate Authority/Under Secretary to the Government of India, Ministry of Defence (Pen-A) New Delhi

.....Respondents

Ld. Counsel for the Respondents. : **Shri A.K. Sahu,**
Addl. Central Govt. Standing Counsel

ORDER**“Per Hon’ble Air Marshal BBP 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 to set aside the impugned order dated 26/27.07.1983 and subsequent decisions of appellate authorities communicated vide letters dated 11.10.1983, 10.02.1987 and 01.02.2016 whereby the claim of the applicant seeking disability pension has been rejected.

II to direct the respondents to sanction and release disability pension to the applicant from the date of his discharge i.e. 27.07.1983 along with its arrears with penal rate of interest till the payment of arrears is made and to continue to pay the disability pension in future in accordance with law.

III to pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

IV to allow the claim petition with cost."

2. Delay in filing this O.A. has been condoned by a co-ordinate Bench of this Tribunal vide order dated 13.2.2017.

3. Shorn of unnecessary details, the facts as they emerge from the record are that the applicant was enrolled in the Kumaun Regiment on the post of Sepoy on 21.03.1976 and was invalided out of service on 26.07.1983. After having put in about six years and odd months of service, the applicant was diagnosed suffering from invaliding disease NEUROSIS-V-67 and the medical authority found him unfit for military service. The applicant was brought before the Invaliding Medical Board which assessed the disease as 'neither attributable to nor aggravated' by military service and assessed the disability at 20% for two years. Pension claim of the applicant was processed and rejected by the competent authority on the ground that the disease was 'neither attributable to nor aggravated' by military service and was constitutional in nature. The applicant represented his cause by preferring an appeal which too was rejected vide order dated 29.11.1985. The second appeal preferred by the applicant also met the same fate and was rejected vide order dated 10.02.1987. Being aggrieved, the applicant has preferred the instant O.A.

4. Learned counsel for the applicant submitted that the onset of the disease suffered by the applicant was not at the pre-enrolment stage;

hence he is entitled to disability pension in view of pronouncements of the Hon'ble Supreme Court as well as various Benches of the Armed Forces Tribunal.

5. Refuting submissions of learned counsel for the applicant, learned counsel for the respondents in the counter affidavit have denied the claim of the applicant on the ground that since the disability of the applicant was assessed as neither attributable to nor aggravated by military service, he was not entitled to the disability pension.

6. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the material on record.

7. The proposition of law with regard to disability pension has been well settled by the Hon'ble Supreme Court and is no more a *res integra*. Hon'ble the Apex Court in the case of **Dharamvir Singh versus Union of India and others**, reported in (2013) 7 SCC 316, has observed 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 the present case, it is undisputed that at the time of entry in service, the applicant was found to be medically fit. The onset of the disease was detected after six years and odd months of his putting in Military service, as such, it cannot be presumed that the applicant was suffering from the invaliding disease at the time of enrolment. The respondents have failed to bring on record any document to suggest that the applicant was under treatment at the time of entry for such a disease or hereditary he was suffering from such disease. The Invaliding Medical Board has not given any reason in writing to come to the conclusion that the disability of the applicant was not due to Military service and could not have been detected at the time of enrolment.

9. Keeping in view the facts of the present case and the pronouncement of the Hon'ble Apex Court in the case of **Dharamvir**

Singh (supra), the disease of the applicant is to be considered as attributable to Military service. Since, the period of disability of about two years is pre-01.01.1996, hence the benefit of rounding off cannot be extended to the applicant because the scheme of rounding off has come in force with effect from 01.01.1996.

10. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The impugned orders are hereby set aside. The respondents are directed to grant disability pension to the applicant at the rate of 20% for two years from the date of discharge i.e. 26.07.1983. The respondents are also directed to conduct Re-Survey Medical Board for re-assessing the present medical condition of the applicant. Future entitlement of disability pension shall be subject to the outcome of Re-Survey Medical Board. The respondents are further directed to comply with the order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: May 30, 2018
anb

(Justice S.V.S. Rathore)
Member (J)