

Court No. 1 (List B)**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 190 of 2016****Thursday, this the 29th day of June 2017****Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**Jai Prakash Yadav S/O Sri Shiv Persan Yadav, R/O V.-Tiarahaiderpur,
Post-Malap, Teh.-Rasara, Distt- Balia (U.P.)

.....Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Senior Records Officer for OIC Records Topkhana Abhilekh Artillery records, Nasik Road Camp, PIN-422102, APS PIN-908802.
3. Principal Controller of Defence Accounts Pensions, Allahabad..
4. Addl. Directorate General of Personal Services (PS-4) AG's Branch, Integrated HQ of MOD (Army) DHQ PO. New Delhi-110011.

Ld. Counsel for the :
Respondents**Shri A.N. Tripathi,
Ld. Counsel for the Respondents.**

ORDER (ORAL)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension.

2. The applicant was enrolled in the Indian Army in Regiment of Artillery on 18th August 1985 in a medically fit condition. In pursuance to the Invaliding Medical Board held on 26th April 1986 in Military Hospital, Devlali, it was found that the applicant was suffering from “BROCHIECTASIS (LT) 494” as aggravated by military service with disability to the extent of 20% for two years. However The Medical Board further held that it is not aggravated or attributable to the military service and invalided out of service with effect from 26th May 1986(AN) under item IV of Army Rule 13(3). The applicant moved the application for disability pension which was rejected by PCDA, Allahabad on 28th October 1986. Another application was moved by the applicant to the appropriate authority which was also rejected on 31st May 2008 directing the applicant to move an appeal before the Competent Authority. Applicant moved First Appeal on 10 January 2009 followed by reminder dated 27th February 2009, but with no avail. Feeling aggrieved, the applicant filed the present Original Application.

3. Delay in filing the original application has been condoned vide order dated 01.07.2013.

4. Heard Shri V.A. Singh, learned counsel for the applicant and Shri A.N. Tripathi, learned counsel for the respondents and perused the record.

5. Payment of disability pension inhibits itself is a recurring cause of action. Question with regard to grant of disability pension is no more *res integra*.

6. Since the applicant was enrolled in a medically fit condition and invalided out after approximately 09 months of service in a low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment, the disability has to be considered as attributable to and aggravated by military

service in terms of judgment of *Dharamvir Singh vs. Union of India and others*, reported in (2013)7 SCC 316, *Sukhvinder Singh vs. Union of India*, reported in (2014) 14 SCC 364, *Union of India and others vs. Angad Singh Titaria*, reported in (2015) 12 SCC 257 and *Union of India and others vs. Rajbir Singh*, reported in (2015) 12 SCC 264 and the applicant is entitled for grant of disability pension.

7. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of *K.J.S. Buttar vs. Union of India and Others*, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, *U.O.I. & Anr vs. K.J.S. Buttar* and *Union of India vs. Ram Avtar & Others*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

8. In view of the above the Original Application deserves to be allowed.

9. Accordingly the Original Application No. 190 of 2013 is **allowed**. The impugned orders dated 28.10.1986 and 30.09.2010 passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for two years from the date of discharge, which would stand rounded of to 50% in terms of policy letter dated 31.01.2001 and in terms of decision of Hon'ble The Apex Court in the case of **Ram Avtar** (supra). The respondents are directed to pay arrears of disability pension alongwith 9% interest from three years prior to filing of the Original Application i.e. 30.05.2010 till the date of actual payment. The respondents are further directed to refer the applicant's case to Re-Survey Medical Board in terms of decision of Hon'ble The Apex Court in the case of **Veer Pal Singh** (supra) for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order.

10. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: 29th June, 2017
RPM/-