

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 340 of 2015

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)

Jitendra Kumar Singh (No 15217480F Ex Recruit), S/o Late
Shri Shibhan Singh, Village – Pasoli, Post – Lakhawati,
Tehsil – Bulandshahar, District – Bulandshahar, State – Uttar Pradesh

..... **Applicant**

By Legal Practitioner – **Shri R Chandra, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi - 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, (Army), DHQ, Post Office New Delhi - 110011.
3. The Officer In – Charge, Artillery Records, Nasik Road Camp – 422102, APS PIN - 908802
4. The Chief Controller of Defence Accounts, (Pension), Draupadi Ghat, Allahabad (UP)-211014

..... **Respondents**

By Legal Practitioner – **Shri Namit Sharma,**
Learned Counsel for the Central Govt.

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 and its rounding off.
2. The undisputed factual matrix on record is that the applicant was enrolled in the Army on 28.12.2007 and discharged from service on medical grounds on 10.12.2008 under Army Rule 13 (3) IV for disease “**PUJ OBSTRUCTION (RT) LOWER MOITY DUPLEX SYSTEM’S (RT) KIDNEY**” in low medical category. Release Medical Board held at the time of discharge assessed his disability as 20% for life and considered it as neither attributable to nor aggravated by military service. His claim for disability pension was submitted to the competent authorities but was rejected on 20.03.2009. His first and second appeals were also rejected 27.09.2010 and 06.02.2013 respectively.
3. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present Original Application.
4. We have heard Shri R Chandra, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.
5. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and discharged in Low Medical Category, his disability should be considered as attributable to military service and his case is covered by the decision in the case of *Sukhvinder Singh vs. Union of India*, reported in (2014) STPL (WEB) 468 SC.
6. **Per contra**, Learned Counsel for the respondents submitted that disability pension claim of the applicant was rightly rejected as per Paragraph 173 of Pension Regulations 1961 (Part-1), which clearly states that pension may be granted to an individual who is invalided from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above.

7. We are of the view that since the applicant was enrolled on 28.12.2007 in a medically fit condition and was discharged from service on 10.12.2008 under Army Rule 13 (3) IV and respondents have not produced any documents on record to prove that the disability existed at the time of enrolment. The disability has to be considered as attributable to and aggravated by military service in terms of judgments 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.

8. 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 Othiss*, 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 & Othiss*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

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

10. Accordingly the Original Application is **allowed**. The impugned orders dated 20.03.2009, 27.09.2010 and 06.02.2013, passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life, which would stand rounded off to 50% for life from three years prior to filing of the Original Application i.e. 31.10.2012. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

11. No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

Dated: June, 2017

ukt/-

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