

**Court No.1(B)**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 151 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)**

MR-5675K Col Shashi Prabha Prasad (Retd)  
W/O Brig N.D. Prasad, VSM (Retd)  
24B, Avas Vikas Colony  
Mall Avenue  
Lucknow – 226002 (UP)

..... **Applicant**

By Legal Practitioner – Col Y.R. Sharma (Retd), Advocate

Versus

1. Ministry of Defence, Through Secretary Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters South Block, New Delhi-110011.
3. Adjutant General, ADG (PS) AG's Branch IHQ of MOD (Army), Army Headquarters, New Delhi-110011.
4. Appellate Committee on First Appeal (ACFA) AG's Branch, IHQ of MOD (Army) Brassey Avenue, Church Road, New Delhi – 110001
5. Second Appellate Committee on Pension (SACP) AG's Branch, IHQ of MOD (Army) Brassey Avenue, Church Road, New Delhi – 110001
6. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.
7. Presiding Officer, Release Medical Board Command Hospital (Southern Command), Pune

..... **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 commissioned in the Army Medical Corps (AMC) as a Short Service Commissioned Officer on 29.07.1983 and after completion of four years of service in AMC as Short Service Commissioned Officer, the applicant was granted Permanent Commission in AMC on 29 Jul 1987 and was also granted anti date seniority with effect from 29.07.1982 for having done MBBS and DCH before joining the AMC. At the time of grant of permanent commission also the applicant was brought before a medical board and no abnormality was detected at the time of commissioning of the applicant in the Army. Thereafter the applicant served as Graded/Classified specialist officer in various Hospitals. On 11.01.2013, Release Medical Board was held and the applicant was brought before Medical Board and assessed her disability 40% for (i) CORONARY ARTERY DISEASE and 40% for (ii) HYPERTENSION (Composite disability was assessed @ 64% rounded off to 60%) and disability was considered as neither attributable to nor aggravated by military service. The applicant superannuated from service in low medical category P2 (Permanent) for both the disabilities on 30.06.2013 (afternoon). The claim of the applicant for grant of disability pension was rejected by the Additional Directorate General Personnel Services, New Delhi vide order dated 26.08.2013. Her first and second appeals were also rejected by First/Second Appellate Committee vide orders dated 04.07.2014 and 06.01.2016 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 Col Y.R. Sharma (Retd), 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, her disability should be considered as attributable to military service and her 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) and Regulation 53 of Pension Regulations for the Army 2008, Part-I, 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 in a medically fit condition and was superannuated from service after about 30 years of service 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 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).

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

10. Accordingly the Original Application is **allowed**. The impugned orders dated 26.08.2013, 04.07.2014 & 06.01.2016 passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 60% for life, which would stand rounded off to 75% for life from three years prior to filing of the Original Application i.e. 01.07.2013. 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: 29<sup>th</sup> June, 2017

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