

RESERVED

COURT NO. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 149 of 2017

Thursday, this the 04th day of January, 2018

"Hon'ble Mr. Justice D.P. Singh, Member (J)

"Hon'ble Air Marshal BBP, Sinha, Member (A)"

No. 24072 Wing Commander S.K. Pandey (Retired), Son of Shri Ram Bilash Pandey, R/o House No. 127, AFNHB Complex, Phase II, Sector 'P' Mansarovar Yojna, Lucknow 226012, State : Uttar Pradesh

..... Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra, Advocate**
(Counsel for the applicant)

Versus

1. Union of India through Secretary Ministry of Defence Government of India, New Delhi- 110011
2. The Chief of Air Staff Air Headquarters New Delhi - 110011
3. Directorate of Air Veterans Air Headquarters SMC Building, 1st Floor, Subroto Park New Delhi – 110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi- 110010.

...Respondents

Ld. Counsel for the Respondents. : **Mrs Anju Singh, Advocate,**
Addl Central Govt Standing Counsel.

Assisted by : **Wg Cdr Sardul Singh,**
OIC Legal Cell.

ORDER**“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of grant of disability pension with effect from 01.01.2016.
2. The facts of the case in nutshell are that the Applicant was enrolled in the Indian Air Force on 31.08.1979 and was subsequently commissioned in the Air Force Service in the year 1996. He was discharged on 31.12.2015 in low medical category A4G2 (Permanent). Before discharge, the Applicant was brought before Release Medical Board which examined him and diagnosed him suffering from PRIMARY HYPERTENSION and assessed his disability as 30% for life. The aforesaid Release Medical Board opined the disability as neither attributable to nor aggravated by the Air Force Service. After discharge, the Applicant applied for disability pension which was rejected and communicated vide order contained in letter dated 11.01.2016. The first appeal was also rejected vide order as contained in the letter dated 25.01.2017. It is in this backdrop that the aforesaid O.A has come to be filed in this Tribunal.
3. We have heard learned counsel for the Applicant as also learned counsel for the respondents.

4. The only contention raised by learned counsel for the respondents is that the disability of the Applicant was opined to be neither attributable to nor aggravated by military, hence he is not eligible for Disability Pension.

5. The next question revolves round attributability of his disability. The learned counsel in the counter affidavit averred that onset of individual disability was diagnosed in Sept 2006 at Kolkata which was peace area. His medical and service documents reveal that he was incidentally detected to be hypertensive during AME while serving in Kolkata. It is further averred that Primary Hypertension is an idiopathic disorder with a strong correlation and is per se not attributable to military service. It is also averred that aggravation is conceded when the onset occurs while serving in or close time association with service in operational area. However, in the case of Applicant the onset was in a peace station and at the time of RMB, his blood pressure was optimally controlled on medication with no evidence of target organ damage. Hence his ID Primary Hypertension was conceded as neither attributable to nor aggravated by service.

6. Be that as it may, in any case the law on the issue of attributability has been well settled by Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors:***

"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)."

7. Hence in the light of the law established on attributability, the disability of the applicant is to be treated as 'attributable to military service.'

8. On the question of rounding off of disability which was assessed as 30% for life, we would like to quote operative portion of the judgment of the Hon'ble Supreme Court on rounding off of disability pension rendered in the case of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014:-

"4. By the present set of appeals the appellant raise the question, whether or not, an individual, has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to suffering from some disability which is attributable or aggravated by the military service, is entitled to grant the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, the basis of Circular No. 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available on to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. we have heard learned counsel for the parties at length.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension."

9. In the light of the aforesaid judgment, the applicant's disability percentage 30% is rounded off to 50% for life from three preceding years from the date of filing of the present petition i.e. with effect from 01.08.2015 because the applicant was released from service with effect from 31.07.2015.

10. In the result, the O.A is allowed and it is directed that the respondents shall release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. However the arrears is restricted to three years prior to filing of the O.A. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 10% per annum from the due date, till actual payment thereof.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: January, 2018

MH/-