

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 87 of 2016**FRIDAY, this the 19th day of January 2018**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 4169873-K Ex Nk (TS) Diwan Singh son of late Shri Hari Singh resident of Dhari PO Brabey Distt Pithoragarh (Uttarakhand)

....Applicant

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate.**
Applicant

Verses

Union of India through Secretary, Ministry of Defence,
South Block, New Delhi and
others.....Respondents**(Per Hon Air Marshal BBP Sinha, Member (A))**

1. I have perused the orders dictated by my learned brother in the open Court today.
2. The relief sought in the instant case is for grant of disability pension as the applicant had been discharged with 70% disability and further rounding off to 75%.

3. There is no cleavage of opinion in so far reliefs sought for grant of disability pension and the relief of rounding off are concerned. I am in full agreement with the judgment dictated orally in court by my learned brother. The only point which led me to disagree with my brother is on the point of exemplary cost of Rs 50,000/- which has been imposed on the respondents for denying disability pension in 1994.

4. The Applicant in the instant case was enrolled in the Indian Army on 29.06.1977 and was invalidated out from service on 02.02.1994 after rendering more than 16 years of service which has entitled him to service pension and he is in receipt of the same. According to medical opinion, the disability was neither attributable to nor aggravated by military service.

5. The disability suffered by the Applicant was low vision and for the first time he was referred to eye specialist on 17.03.1993. Ultimately on 28.10.1993, the Eye Specialist opined that the applicant was not likely to have improved vision in Lt eye and his right eye may further deteriorate in spite of laser therapy and opined him to be unfit for further service.

6. From 02.02.1994 onwards, there is nothing on record to indicate that the applicant either applied for disability pension or preferred any representation or appeal before any quarter. It is averred that on 15.05.2014 he met the counsel in a marriage party who apprised him of the decision of the Apex Court which entitled him to disability pension. It is thereafter that the applicant filed the present O.A.

7. The delay in filing the O.A was condoned citing the ground of its being a recurring cause of action vide order dated 29.02.2016.

8. It was for the first time that in the case of Dharamvir was reported in **(2013) 7 Supreme Court Cases 316**, in which Hon'ble The Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position which is of great benefit to thousands of Ex Servicemen in the country. In the present case, the applicant also draws his entitlement to disability pension from this judgment.

9. My view is that this case dates back to the year 1994 and at that time the view expressed in Dharamvir's

case was not in vogue. Hence for the view expressed in the medical opinion, as not attributable to or aggravated by military service, there should not be any criticism or consequent penalties in the shape of cost as has been done in the instant case. Specifically so when respondents have ensured that the applicant went out in 1994 with service pension.

10. In view of the above, I am of the view that the ends of justice for both the applicant and respondents would be fully met with Applicant's entitlement for 70% disability pension from the date of discharge which shall be rounded off to 75%.

11. It is my considered opinion that imposing penalty for old cases (Pre-Dharamvir judgment) not adjudicated on lines of Dharamvir judgment will not be fair to respondents because it has potential to open Pandora box for similar claims from a large number of Ex Servicemen. Any organisation is dynamic by design and it changes with times. We should normally not impose cost unless there is malafides intent or gross negligence on the part of defaulting party.

12. As a result of foregoing discussions, the O A is allowed and the applicant is held entitled to disability at

the rate of 70% which shall stand rounded off to 75% from the date preceding three years of filing the O.A.

**(Air Marshal BBP Sinha)
Member (A)**

Dated: January, 2018
MH/-