

RESERVED
COURT NO. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

O.A. No. 671 of 2017

Wednesday, this the 31st day of January, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

JC-226688Y Shambhu Nath Pandey Village Itoura, PO Itoura
(Motinagar) District Faizabad..... Applicant

Ld. Counsel appeared for the Applicant **-Shri Nilesh Anand, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, Govt of India, New Delhi.
2. Record Office, Artillery Records, Topkhana Abhikekh, Nasik Road Camp -422102
3. The Principal Controller of Defence Accounts Draupadi Ghat, Allahabad.

-----**Respondents**

Ld. Counsel appeared for the Respondents **- Smt Amrita Chakraborty ,**
Advocate, Addl Central Govt.
Standing Counsel

Assisted by **- Maj Salen Xaxa,**
OIC Legal Cell

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

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 thumbnail sketch of the facts is that the applicant was enrolled in the Indian Army on 16.09.1971 in shape-1 and was discharged from service with effect from 30.09.1999 after completion of normal terms of service. Before discharge, he was brought before the Release Medical Board which found him in low medical category for his disability “NIDDM (NON-OBSE)-250” but opined it as neither attributable to nor aggravated by military service. The degree of disablement was assessed as 20% for two years. The case for disability pension was rejected on 08.05.2000. The first appeal preferred also culminated in being rejected on the ground that disability being a metabolic disorder was neither attributable to nor aggravated by military service.
3. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.
4. We have heard Ld. Counsel for the applicant and Ld. Counsel for the respondents and perused the record.
5. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and discharged in Low Medical Category, his disability should be

considered as attributable to military service and he should be granted disability pension.

6. Per contra, the respondents have not disputed that the applicant suffered disability to the extent of 20% for two years, but submitted that the disability due to the disease of "NIDDM (NON-OBSE)-250" which was an offshoot of metabolic disorder was considered as neither attributable to nor aggravated by military service, as such, in terms of Para 173 of Pension Regulations, his claim has correctly been rejected.

7. Since the applicant was enrolled in a medically fit condition and discharged after approximately 29 years of service in 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 considered 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 O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for two years, which would stand rounded off to 50% for two years from the date of discharge. It is further directed that the applicant shall again be referred to be examined by Resurvey Medical Board within three months from today by respondents and further payment of disability pension shall be subject to the opinion of the Resurvey Medical Board. It is made clear that the disability pension and the arrears if eligible thereon shall be payable to the applicant with effect from 11.10.2014 i.e. three years preceding filing of the O.A. 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 BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : January, 31 ,2018

MH/-

