

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 277 of 2016

Thursday, this the 4th day of January, 2018

Hon'ble Mr. Justice DP Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

IC-27952K Colonel (Retd) Bimal Kishore Charan, son of Late Isaac Albert Charan, resident of 9A, Ram Vatika Colony, 15 New Civil Lines, Bareilly-243001

... Applicant

Counsel for the Applicant: **Shri YR Sharma, Advocate**

Vs.

1. Union of India 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-110001.
4. Chairman, Second Appellate Committee on Disability Pension, Integrated HQ of MoD (Army), AG's Branch, Room No. 416 'A' Wing, Sena Bhawan, DHQ, PO New Delhi - 110011.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Counsel for the respondents: **Mrs. Deepti P Bajpai,**
Central Government Standing
Counsel

ORDER**(Per Hon'ble Air Marshal BBP Sinha, Member (A))**

1. Feeling aggrieved by refusal to grant disability pension, the applicant has approached this Tribunal by filing the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007.
2. Briefly stated, facts necessary for the purpose of adjudication of present Original Application are that the applicant was commissioned in the Indian Army in Corps of Electrical and Mechanical Engineering (EME) on 23.12.1973. Between 1974 and 2008, the applicant remained posted at various places including Paratapur Sector in Siachin.
3. While applicant was posted at Jabalpur, during annual medical examination the applicant was subjected to Medical Board proceedings and on 30.10.2006, the Medical Board downgraded medical category of the applicant due to "**PRIMARY HYPERTENSION i-10**" and placed him in Medical Category P2 (T-24). Subsequently, the re-categorisation Medical Board was held on 16.04.2007 and the applicant was placed in Medical Category P2 (Permanent). The Release Medical Board (RMB) of the applicant opined that the disability was neither attributable nor aggravated by military service (NANA), being constitutional in nature and assessed the disability to be 30% for life.
4. The respondents in the counter affidavit, in para 7 have made a bald averment that the disease suffered by the applicant was assessed as NANA, hence in view of Para 53 of the Pension Regulations for the Army, 1961 (Part-I) the applicant was not entitled to disability pension.
5. Aggrieved with refusal to grant disability pension, the applicant preferred First Appeal and Second Appeal which were rejected vide order dated 07.07.2015 and 14.09.2016 respectively. Aggrieved, the applicant preferred the present Original Application.
6. We have heard learned counsel for the parties and perused the record.

7. Delay in filing the Original Application has been condoned by this Tribunal vide order dated 26.10.2016.

8. The question of attributability of disability is no longer 'RES INTEGRA'. The Hon'ble Supreme Court in the case of **Dharmvir Singh vs. Union of India & others**, reported in 2013 AIR SCW 4236, has held that in case disability is not detected at entry level but later on during course of service and the Invalid/Release Medical Board does not specify reasons as to how the disability could not be detected at the time of enrolment, then the disability will be presumed to be on account of Military service and it necessarily has to be treated as attributable to and aggravated by military service. Relevant portion of the judgment contained in Para 28 is reproduced as under:

"28. A conjoint reading of various provisions, reproduced above, makes it clear that: (i) 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 causalty and is assessed at 20% or above, the question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173). (ii) A member is to be presumed in sound physical and mental condition upon entering 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 r/w Rule 14(b)]. (iii) 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). (iv) 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 4 conditions were due to the circumstances of duty in military service. [Rule 14(c)]. (v) 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. [14(b)]. (vi) 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. [14(b)]; and (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."

9. In view of above mentioned well settled proposition of LAW, the applicant's disability is considered as ATTRIBUTABLE TO MILITARY SERVICE.

10. Further, the question of rounding off of disability pension has been well settled by Hon'ble Supreme Court in the case of **Union of India and Ors vs. Ram Avtar & ors** (Civil Appeal No 418 of 2012 dated 10th December 2014) for cases of superannuation and release from service, not necessarily through Invalid Medical Board. The relevant portion of the decision being relevant is excerpted below:

"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on 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 only 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."

11. In view of the ratio of the above mentioned judgment, the applicant is also entitled to the benefit of 'rounding off' of his disability element of pension from 30% to 50%.

12. The gist of our observations made in the foregoing paragraphs is that the applicant was enrolled in the Indian Army in a medically fit condition and was discharged from service in low medical category. There is no reasoned opinion in support of the NANA finding arrived at by the Release Medical Board as to why the disability could not have been

detected at the time of enrolment. Since the applicant entered in Military service in a medially fit condition, disability will be considered as ATTRIBUTABLE TO MILITARY SERVICE.

13. Accordingly, the Original Application is **allowed**. The impugned orders passed by the respondents denying disability pension to the applicant are hereby set aside. The respondents are directed to grant disability pension to the applicant @30% for life which shall be rounded off to 50% for life from three years prior to the filing of the present Original Application, i.e. 14.07.2013 within four months from the date of presentation of a certified copy of this order failing which the applicant shall be entitled to interest @ 9% per annum on the amount accrued from due date till the date of actual payment

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice DP Singh)
Member (J)

January 4, 2018
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