

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 32 of 2018**

Thursday, this the 5th day of April, 2018

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

No. 4165862 Ex Sep. Trilok Singh Vill & Post – Muwani, Distt
– Pithauragarh, Uttrakhand.

....Applicant

Ld. Counsel for the : **Shri V.A. Singh,**
Applicant **Advocate.**

Verses

1. Union of India and others through The Secretary Ministry of Defence South Block, New Delhi – 110011.
2. Chief of the Army Staff Integrated HQ of Mod (Army) DHQ PO, New Delhi – 110011.
3. Records the Kumaon Regiment Pin – 900473 C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Ms Appoli Srivastava,**
Respondents **Advocate,** Central
Govt Standing Counsel.

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

“(i) Issue/pass an order or direction to set aside the Order passed by officer-in-charge Records, Kumaon Regiment dte 09 Sept 1989.

(ii) Issue/pass an order or direction of appropriate nature to quash/set aside the Orders of Govt of India, MoD, vide letter dte 11 Nov 1991.

(iii) Issue/pass an order or direction of appropriate nature to quash/set aside the Orders of Principal controller of defence Accounts (Pension) dte 25 Oct 2005.

(iv) Issue/pass an order or direction of appropriate nature to the respondents to grant 20% Disability element and Disability Pension to the Applicant from date of Invaliding out of service with Broad – banding it from 20% To 50% as per applicable policy.

(v) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(vi) Allow this application with cost.”

2. The facts of the case in nutshell are that the applicant was enrolled in the Indian Army on 27.04.1974 and was invalidated out from service on 04.05.1989 after rendering 15 years and 8 days of service under Army Rule 13(3) Item III (iii) on account of suffering from psychiatric ailment.

Before being invalidated out from service, the applicant was brought before Invaliding Medical Board for examination which was conducted on 03.04.1989. The Invalidating Medical Board opined him suffering from NEUROTIC DEPRESSION. However, it opined the disease as neither attributable to nor aggravated by military service. The disability of the applicant was assessed as 20% for five years. The case of the applicant, it would appear, was processed for grant of disability pension which was rejected by the PCDA (P) Allahabad vide communication dated 23.09.1989 on the premises that it was neither attributable to nor aggravated by military service. Aggrieved, the applicant preferred first appeal which was rejected by the competent authority vide communication dated 11.11.1991. Thereafter, the applicant also preferred representation which is said to have been suitably replied.

3. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. It would appear from a perusal of the record that since initially, the disability was assessed as 20% for five years, there is nothing on record to show that the Applicant was ever asked to be present for being examined by Resurvey Medical Board.

5. Learned counsel for the applicant in vindication of his case relied on various decisions of the Apex Court including the ***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.

6. Per contra, learned counsel for the respondents repudiated the above submissions by citing the provisions of para 173 of Pension Regulation 1961 (Part 1) submitting that to earn disability pension, the disability should either be attributable to or aggravated by the military service with 20% disability or more whereas in the instant case, the disability of the applicant was assessed as neither attributable to nor aggravated by military service and hence he is not eligible for grant of disability pension.

7. The law on attributability of disability is now well settled. Since the applicant was enrolled in a medically fit condition and was invalidated out in a low medical category and that the respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment. Therefore the disability of the applicant has to be considered as attributable to 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. In the case of **Dharamvir Singh vs. Union of India & Ors**, the Apex Court held as under:

"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)."

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. Now we come to second issue of rounding off of disability percentage. 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. However rounding off will be applicable only wef 1996 & thereafter.

9. In view of the above, the O.A deserves to be allowed and is accordingly allowed. The Applicant is held entitled to disability pension to the extent of 20% for five years from the

date he was invalidated out from Army Service. The respondents are further 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. The Respondents are also directed to refer the case to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any, within four months of this order.

10. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: April, 05 , 2018

MH/-