

**RESERVED
Court No.1**

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

ORIGINAL APPLICATION NO. 431 of 2017

Thursday, this the 12th day of April, 2018.

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

SL-3947A Lt Col Narayan Singh Thapa (Retd) son of late Man Singh Thapa, resident of Nams Sadan, House No. 307, Upper Sainik Basti, Tapkeshwar Road, Dehradun (Uttarakhand)

.....Applicant

Ld. Counsel for the: **Shri Lalit Kumar, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence South Block, Delhi.
2. The Adjutant General, Integrated HQ of MoD (Army), New Delhi.
3. Director General Armed Forces Medical Services, Ministry of Defence, 'M' Block, New Delhi-110001
4. Director General Medical Services (Army), Integrated HQ of MoD (Army), New Delhi.
5. The PCDA (Penions) Allahabad (UP).

...Respondents

Ld. Counsel for the : **Dr. Gyan Singh, Central Govt Counsel,**
Respondents. **Assisted by – Maj Salen Xaxa, OIC Legal Cell**

ORDER

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

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension as well as for granting the benefit of its rounding off.
2. Brief facts as borne out from the record are that the applicant was enrolled in the Gorkha Rifles (Infantry) of the Army as a Sepoy on

18.04.1975. Subsequently, on 12.04.1990 he was granted commission in the rank of 2/Lt in the cadre of Special List (SL) Officer. While serving with the Artillery Unit at Saugor (MP), he was admitted in the Military Hospital Saugor due to his feeling not well and was diagnosed to be suffering from Primary Hypertension and was placed in low medical category P-3 (Temporary) for 24 weeks for the said disease. In December, 2010 the applicant was posted to the Indian Military Academy (IMA). On 16.08.2011 the applicant was admitted to Military Hospital Dehradun for review of his medical category. On 19.08.2011 Review Medical Board upgraded his medical category from P-3 to P-2 (Temporary) for 24 weeks. In the last week of December, 2011 the applicant received his retirement order from Army HQ indicating therein that he would be retired from service on 30.11.2012. On 15.06.2012 the applicant was brought before RMB at Military Hospital Dehradun which assessed his disability at 30% for life but opined that it is neither attributable to nor aggravated by military service. Accordingly on 03.10.2012 he was informed by the respondent no.2 that his claim for disability pension had been rejected.

3. Learned counsel for the applicant submitted that at the time of enrolment of the applicant in the Army as Sepoy i.e. 18.04.1975 and at time of grant of commission to him on 12.04.1990 the applicant was in a fit medical condition, as such, his disability should be considered as attributable to and aggravated by Army service and disability pension should be granted to the applicant in consonance with the provisions of Regulation 423 of the Pension Regulations for the Army.

4. Rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the Release Medical Board has opined that the disease suffered by the applicant is neither attributable to nor aggravated by military service, as such, the applicant has rightly been denied disability pension.

5. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

6. In this case on 23.02.2018 the respondents were granted four weeks' time as a last opportunity to file counter affidavit but the same has

not been filed. Hence, we proceeded with the hearing of the case without the same and the case is being disposed of finally on the basis of material available on record, particularly the Release Medical Board.

7. The law on the point of grant of disability pension and its rounding off is no more res integra. In the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316, while considering the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In ***Dharamvir Singh's*** (supra), their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. Similar view was expressed by their Lordships of the Hon'ble Supreme Court in the cases of ***Sukhvinder Singh vs. Union of India***, (2014) 14 SCC 364, ***Union of India & ors vs. Angad Singh Titaria***, (2015) 12 SCC 257 and ***Union of India vs. Rajbir Singh***, (2015) 12 SCC 264.

8. In the case in hand, since the Release Medical Board has assessed the disability as 30% for life and has not given any reason as to why the disease could not be detected at the time of enrolment, the disability suffered by the applicant in view of the settled proposition of law is to be considered as attributable to military service.

9. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of ***K.J.S. Buttar vs Union of India and ors***, (2011)11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No. 5591/2006, ***Union of India & anr vs. K.J.S.Butter*** and ***Union of India vs. Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 decided on 10th December, 2014).

10. Accordingly, O.A. No. 431 of 2017 is allowed. The impugned order dated 04.06.2012 passed by the Release Medical Board (RMB) and order

dated 03.10.2012, conveying rejection of claim for disability pension to the applicant are set aside. The respondents are directed to grant disability pension to the applicant after rounding off @ 50% for life from three proceeding years of filing of this petition i.e. 09.10.2014. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the applicant shall also be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

11. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated : April 12, 2018

JPT

(Justice SVS Rathore)
Member (J)