

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

Original Application No 07 of 2023

Friday, this the 28th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ramadhar Singh, No. 14389033M, Ex. Nk, S/o Shri Jagdeshwar Prasad Yadav, R/o: Vill: Bhojpur, The: Chhibramau, P.O. :Mishouli Kannauj (U.P.) - 209721

-----Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi – 110011.
2. Dir PS-4, Adjutant General’s Branch, IHQ of MoD (Army), New Delhi - 110011.
3. OIC Record, Records Artillery Nasik Road Camp - 422102
4. PCDA (P), Draupadi Ghat, Allahabad (U.P.) – 211014.

..... Respondents

Ld. Counsel for the Respondents :**Shri Pushendra Mishra,**
Central Govt. Counsel.

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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

- “(i) That this Hon’ble Tribunal may kindly be pleased to set aside the impugned rejection order of disability pension, if any, and grant the disability pension @ 55% rounded off 75% for life to the applicant w.e.f. 26.11.2004, to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- “(ii) That this Hon’ble Tribunal may kindly be awarded the cost Rs. 30,000/- (Rupees Thirty Thousand Only) to the applicant against the opposite parties.*
- “(iii) That that Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.”*

2. Counter affidavit filed by the respondents is taken on record.

3. The undisputed facts, as averred by the learned counsel for both the parties, are that applicant was enrolled in the Indian Army on 09.07.1985 in medically fit condition and was invalided out from

service with effect from 26.11.2004 in low medical category after rendering more than 19 years of service. The Invaliding Medical Board (IMB) assessed applicant's first disability "**RT SPHENOID BONE FIBROUSDYSPLASIA (OPTD)**" @ 20% for life and his second disability "**OPTIC ATROPHY**" was assessed @ 100% for life and composite disability was assessed @ **100%** for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 04.08.2005. His First appeal dated 17.11.2005 for grant of disability pension has also been rejected by the respondents vide order dated 25.09.2006. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 09.07.1985, at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Army Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of disability pension + Constant Attendance Allowance (CAA).

5. On the other hand, Ld. Counsel for the respondents contended that applicant was invalidated from service after rendering 19 years of service. IMB assessed disabilities (i) RT SPHENOID BONE FIBROUSDYSPLASIA (OPTD) ” @ 20% for life and (ii) “OPTIC ATROPHY” @ 100% for life but considered as neither attributable to nor aggravated by military service. These diseases have no casual connection to Army service. Hence these disabilities cannot be treated as attributable to military service under the provisions of Rule 173 of Pension Regulations for the Army 1961 (Part-I). The applicant is not entitled to disability element of disability pension as his disabilities are assessed as NANA. He pleaded for dismissal of the Original Application.

6. Learned counsel for the applicant placed reliance on the judgments of the Hon’ble Apex Court in ***Dharamvir Singh vs. Union of India***, Civil Appeal No. 4949/2013, decided on 02.07.2013 and ***Sukhvinder Singh vs. Union of India & Ors***, reported in (2014) STPL (WEB) 468 SCC and AFT (RB) Lucknow judgment in O.A. No. 443 of 2019, ***Ex Nk (ACP Hav) Pandu Kumar Reddy vs. Union of India & Ors***, decided on 19.02.2021 and pleaded for grant of 100% disability element and CAA to the applicant in view of aforesaid judgments. However, prayer of CAA has not been made in the relief para of the O.A.

7. While filing counter affidavit, the respondents have not disputed that applicant suffered disability "OPTIC ATROPHY" assessed @ 100% for life, considered as NANA and 20% disability for life for disability "RT SPHENOID BONE FIBROUS DYSPLASIA (OPTD)".

8. We have perused the record and also gone through the IMB. The question before us is whether the disabilities suffered by the applicant are attributable to or aggravated by military service?

9. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** reported in (2013) 7 Supreme Court Cases 316. In this case 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 emerging from the same in the following words :

"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)."*

10. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disabilities **RT SPHENOID BONE FIBROUSDYSPLASIA (OPTD)** and **OPTIC ATROPHY** are neither attributable to nor aggravated (NANA) by service on the ground that these disabilities are constitutional diseases and have no connection with service, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Invalidation Medical Board for denying disability pension to

applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Army on 09.07.1985 and the disabilities have been started after more than 18 years of Army service i.e. in Jul 2003. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India &Ors*** (supra), and both the disabilities of the applicant should be considered as aggravated by Army service.

11. We also observe that applicant was 100% disable as recommended by the IMB that his composite disabilities are assessed @ 100% for life. Therefore, the applicant shall also be granted Constant Attendance Allowance (CAA) in addition to disability pension in accordance with the rules/instructions issued by the Govt. from time to time. As per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, Govt. of India, Ministry of Defence letter No. 1(2) 2013-D (Pen/Pol) dated 27.04.2015 and PCDA (P) Allahabad Circular No. 543 dated 27.05.2015, applicant is entitled to Constant Attendance Allowance.

12. Resultantly, the O.A. deserves to be allowed, hence allowed. The impugned orders passed by the respondents are set aside. Since, the disability element @ 100% for life is being granted to the applicant from the date of his invalidment from service, the applicant

is now granted 100% disability element for life + Constant Attendance Allowance from the date of invalidment from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), *the arrears of balance 50% of disability element (total 100%) and Constant Attendance Allowance will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 30.12.2022.* The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 28th April, 2023

rk/