

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 369 of 2021**

Thursday, this the 09th day of December, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 1086361W Ex Swr Yatendra Singh Mangla, S/o Late Dan Singh, R/o 592/3B/077, Gopal Nagar, Telibagh (Subhani Khera) Post Office-Vrindavan Colony, Lucknow-226029 (UP).

..... Applicant

Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge, Armoured Corps Ahmednagar-414002.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents. : **Shri Bipin Kumar Singh**, Advocate
Central Govt Counsel

ORDER (Oral)

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

(i) To set aside order dated 21.01.2000 passed by PCDA (Anx-1), order dated 24.07.2001 passed by Govt. MoD New Delhi (Anx-2).

(ii) To grant disability pension @ 20% and round of the same to 50% giving the benefit of Govt of India, Min of Def letter dated 31.01.2001, w.e.f. date of discharge of applicant i.e. 29.02.2016.

(iii) To pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 01.07.1999 till it is actually paid.

(iv) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.

(v) To direct for fresh RSMB to assess present condition and rate of disablement.

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 17.01.1985 and was invalided out from service w.e.f. 30.06.1999 in low medical category prior to completion of terms of engagement. His Invaliding Medical Board (IMB) was held on 31.05.1999 which considered the disability 'BIL Chronic Angle Closure Glaucoma with Severe Visual Loss 364' @ 11-14% for five years neither attributable to nor aggravated by military service (NANA). His claim for grant of disability pension was rejected vide order dated 21.01.2000 on the grounds that the disability is neither attributable to nor aggravated by military service. Appeal filed against rejection of disability pension was also rejected vide order dated 24.07.2001. Feeling aggrieved, the applicant has filed this Original Application.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was examined by the Medical Board and was found medically and physically fit for service in the Indian Army and there is no note, whatsoever, in his service documents that he was suffering from any disease/disability at the time of entry into service. Ld. Counsel for the applicant further submitted that the applicant was first detected to be suffering from the aforesaid disability in January 1998 i.e. after completion of more than 13 years of service. He pleaded that the applicant should be granted disability pension as per the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India***, reported in (2013) 7 SCC 316 and ***Sukhwinder Singh vs Union of India & Ors***, reported in (2014) STPL (WEB) 468.

4. Per contra, Ld. Counsel for the respondents submitted that the PCDA (P), Allahabad has rejected disability pension claim of the applicant on the ground that the disability 'BIL Chronic Angle Closure Glaucoma with Severe Visual Loss 364' is neither attributable to nor aggravated by military service therefore, applicant is not entitled to disability pension. As such his claim for disability pension has been rightly rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more.

5. Heard Ld. Counsel for both the sides and perused the material placed on record.

6. In the instant case while invalidating out of applicant his disability 'BIL Chronic Angle Closure Glaucoma with Severe Visual Loss 364' was assessed @ 11-14% for five years neither attributable to nor aggravated by military service. Since the applicant's services were cut short, he could not serve further till completion of terms of engagement as he was boarded out of service by a duly constituted Invaliding Medical Board held on 31.05.1999. He was removed from service on medical grounds without providing alternative suitable sheltered appointment. In the invaliding case para 173-A of Pension Regulations for the Army, 1961 (Part-I) is relevant which for convenience sake is reproduced as under:-

"173-A. Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note. *The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension".*

7. Applicant's disability was regarded as NANA by the medical board. In this regard, the law on attributability/aggravation of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh vs Union of India & Others**, reported in (2013) 7 SCC 316. In this case the Hon'ble 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)."

8. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to the applicant only by endorsing that the disability 'BIL Chronic Angle Closure Glaucoma with Severe Visual Loss 364' is NANA without giving any reason in this regard which is cryptic in nature. This kind of reason does not reflect the complete

truth on this matter. The applicant was enrolled in the Army on 17.01.1985 and the disability had first started in the year 1998 i.e. after completion of 13 years of Army service. 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** (supra) and the disability of the applicant should be considered as aggravated by military service.

9. Since it is a case of invalidation, his disability 11-14% for five years shall be presumed to be 20% for five years and rounded off to 50% for five years in terms of Hon'ble Apex Court Judgment rendered in the case of **Sukhwinder Singh vs. Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of Hon'ble Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the *“disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”* Para 9 of the judgment, being relevant, is quoted below.

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.**”*

10. Learned counsel for the applicant has also pleaded in the petition for the benefit of rounding off of disability pension and has also made oral prayer for the same. Thus, in consonance with the Policy Letter No.1(2)/97/D (Pen-C) dated 31.01.2001 and in terms of the decision of the Hon'ble Apex Court in the case of **Union of India and Ors vs. Ram Avtar & Ors**, Civil Appeal No 418 of 2012 decided on 10.12.2014, we are of the view that in principle the applicant is entitled to the benefit of rounding off. However, due to law of limitations he shall not be entitled to arrears beyond three years of filing this O.A.

11. Thus, in the result, the Original Application succeeds and is **allowed**. The impugned orders dated 21.01.2000 and 24.07.2001 are set aside. The respondents are directed to grant disability pension to the applicant @ 50% for five years w.e.f. his date of discharge i.e. 01.07.1999. However, the arrears of disability pension will be restricted to three years before filing this O.A. which was filed on 13.07.2021. The respondents are also directed to hold Re-survey Medical Board (RSMB) of the applicant within 03 months of this order. His further entitlement of disability pension will be subject to the outcome of the RSMB. The whole exercise shall be completed within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum.

12. No order as to costs.

13. Miscellaneous applications, pending if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 09.12.2021
rathore