

Court No. 1 (case taken up in Court No. 2)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 616 of 2022**

Tuesday, this the 20th day of December, 2022

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. JC-804688W Ex Sub Kuldeep Singh Rautela
S/o Late Devendra Singh Rautela
R/o R.K. Tent House Road, Subham Vihar Phase-II,
Vill – Kusumkhera, PO – Haripur Nayak,
Distt – Nainital – 263139 (UK)

..... Applicant

Ld. Counsel for the Applicant: **Shri K.P. Datta**, Advocate

Versus

1. Union of India, through its Secretary, IHQ of MoD (Army), New Delhi-110011.
2. The Additional Directorate Gen of Personnel Servies/AG's Branch, IHQ of MoD (Army), PIN-900256, C/o 56 APO.
3. The Officer in Charge, Army Educational Corps Records, Pin-908777, C/o 56 APO.
4. The PCDA (Pension), Draupadi Ghat, Allahabad-211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Vishwesh Kumar**,
Central Govt Counsel

ORDER

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:-

“A. To issue/pass an order or directions to set aside/quash rejection order passed by IHQ of MoD (Army) letter No. B/40502/848/2021/AG/PS-4 (Imp-II) dated 04 Jan 2022, received vide AEC Records letter No. PEN GP/JC-804688W/DP(App) dated 19 Feb 2022.

B. To issue/pass an order or directions to grant composite disability element of disability pension @ 24% with benefit of rounding off to 50% in light of judgment of Hon’ble Apex Court order of Hon’ble AFT in similar cases and Govt of India policy letters from date of discharge wef 31.12.2020.

C. To issue/pass an order or directions to grant arrears with interest @ 18% p.a. from date of discharge wef 31.12.2020.

D. To any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.”

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 22.12.1990 and was discharged from service on 31.12.2020 (AN) in low medical category under Rule 13 (3) I (i) (a) of Army Rules, 1954. The Release Medical Board (RMB) assessed his disabilities (i) “**MENEIRES SYNDROME**” @ 20% and (ii) “**PRIMARY HYPOTHYROIDISM**” @ 5%, composite @ 24% for life and opined the disability as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected by the respondents vide order 16.02.2021. The applicant submitted

first appeal which was also rejected vide order dated 04.01.2022. Thereafter, applicant submitted second appeal which has not been replied by the respondents. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disabilities of the applicant were contracted during the service, hence both are attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316 and ***Sikhwinder Singh vs. Union of India & Others 2014 STPL (Web) 468 SC*** and pleaded that applicant be granted disability pension @ 24% duly rounded off to 50% in view of the Hon'ble Apex Court judgment in the case of ***Union of India vs. Ram Avtar***, decided on 10.12.2014.

4. Ld. Counsel for the respondents contended that disability of the applicant has been assessed @ 24% for life by RMB as neither attributable to nor aggravated by military service and originated in peace area, not connected with service. Hence, as per Para 173 of

Pension Regulations for the Army 1961 (Part-1), applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – are the disabilities of applicant attributable to or aggravated by military service?

6. The disabilities of the applicant (i) “**MENEIRES SYNDROME**” @ 20% and (ii) “**PRIMARY HYPOTHYROIDISM**” @ 5%, have been assessed composite @ 24% for life as NANA and the law on attributability of a disability has already been well settled by the Hon’ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 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)."

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for his disabilities for the reason by declaring the disabilities as NANA, originated in peace area and not connected with service. However, on further scrutiny, we have observed that the disabilities were initially detected in the year 2011 after about 21 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disabilities as NANA is very brief and cryptic in nature and do not adequately

explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disabilities should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 24% disability element for life from his date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element to 50% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders, passed by the respondents are set aside. The disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of disability pension @ 24% for life duly rounded off to 50% for life from the next date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the next date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of

certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) **(Justice Ravindra Nath Kakkar)**
Member (A) **Member (J)**

Dated: December, 2022

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