

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 285 of 2016

Monday, this the 05th day of March, 2018

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

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| <ol style="list-style-type: none"> 1. Pushpa Pandey W/O 2. Santosh Kumar Pandey S/o 3. Tarun Kumar Pandey S/o 4. Sunita Pandey D/o | } | Lt Col Vijay Shankar
Pandey |
|--|---|--------------------------------|

JC- 256361L Ex Naib Subedar R/o Village – Nasrathpur, PO
– Amhar Patti Uttar, Tehsil – Rasra, Distt – Balia, U.P.

.....Applicant

Ld. Counsel for the : **Shri K.M. Srivastava, Advocate.**
Applicant

Verses

1. Union of India Through its Ministry of Defence Secretary New Delhi.
2. Senior Record Officer for OIC Records, Sena Vayu Raksh Abhilekh Army Air Defence Records, PIN – 908803, c/o 56 APO
3. Records 39 GR PIN – 900445, c/o 56 APO.
4. Artillery Records PIN – 908802, c/o 56 APO
5. Principal C.D.A. (Pensions) Office of the Chief C.D.A. (Pensions) Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal, Advocate**
Respondents **C.G.S.C**

Assisted by : Maj Piyush Thakran, OIC Legal Cell.

ORDER

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

1. Present O.A. has been preferred by the applicant who is wife of the deceased soldier under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of granting disability pension treating the disability as 95% attended with the relief of setting aside the order dated 25.06.2014 contained in Annexure 1 to the O.A.
2. The facts in nutshell are that the Applicant's husband was enrolled in the Indian Army on 30.07.1974 and was discharged from the Army on 16.03.1995 on the ground of being invalid in medical category EEE (P). It is alleged that while performing duty, he fell unconscious on 13.06.1994 and he was immediately removed to Command Hospital, Northern Command where he was diagnosed as a case of "LEFT MIDDLE CEREBRAL ARTERY TERRITORY INFRACTION WITH (RT) HEMIPARESIS & HYPERTENSION". His case was reviewed on 17.09.1994 and in this review, he was opined to be unfit to continue further in service and was recommended to be invalided out of service in medical category EEE(P). Thereafter, the applicant's husband was

brought before a duly constituted Invaliding Medical Board at Command Hospital Northern Command on 28.01.1995. After being examined, the disability of applicant's husband was assessed as 100% for two years by IMB. His first disability "LEFT MIDDLE CEREBRAL ARTERY TERRITORY INFRACTION WITH (RT) HEMIPARESIS" was assessed as neither attributable to nor aggravated (NANA by Military Service. However, the IMB conceded the second disability of "HYPERTENSION" as aggravated by Military Service. His composite disability with both disabilities was assessed as 100% by IMB. After discharge, the case of the applicant was processed for disability pension to the PCDA (P) Allahabad. PCDA (P) Allahabad agreed with recommendation of IMB and rejected the claim for disability pension on first count while on second count i.e. HYPERTENSION, it accepted the opinion of the Invaliding Medical Board and granted disability pension @ 50% for five years i.e. till (27.01.2000). Subsequently the case of the Applicant's husband was brought before the Resurvey Medical Board for examination on 09.07.2004 which assessed the disability of the Applicant as 40% for life towards HYPERTENSION w.e.f 28.01.2000 and opined it to be aggravated by military service. It is stated that after efflux of nine years, the applicant put forth his grievance during an Ex-servicemen rally conducted at Ballia on

09.03.2014. The matter was consequently processed. The Army Air Defence Records sent reply to the applicant vide letter dated 21.03.2014. Aggrieved by the reply, the Applicant has filed the instant O.A in this Tribunal.

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. Learned counsel for the respondents contends that disability element is granted to an individual whose invaliding disability is accepted or considered as either attributable to or aggravated by military service and whenever these two conditions are not fulfilled together no disability pension would be admissible. In the instant case, on first count, the disability was opined to be neither attributable to nor aggravated by military service. However on second count, i.e. HYPERTENSION the disability was opined to be aggravated by military service and it was assessed as 100% for two years. It is further contended that since Medical Advisor (Pension) rejected Applicant disability on first count being neither attributable to nor aggravated by military service, the disability pension despite being 100% on first count was rejected. However, on second count since the disability HYPERTENSION had been accepted as aggravated by military service with 50% for five years between 16.03.1995 to 27.01.2000, disability pension

was accordingly granted in terms of the recommendations. It is also contended that since Resurvey Medical Board had opined Applicant disability on second count i.e. HYPERTENSION as aggravated by military service and assessed his disability as 40% for life with effect from 28.01.2000, the disability pension was accordingly granted at the rate of 40% for life w.e.f 28.01.2000.

5. In so far as disability on first count i.e. "LEFT MIDDLE CEREBRAL ARTERY TERRITORY INFRACTION WITH (RT) HEMIPARESIS" is concerned, it brooks no dispute that the Invalidating Medical Board had assessed the disability as 100% for two years. The law on this count is well settled by catena of decisions. It is trite to say that since the applicant was enrolled in a medically fit condition and discharged after more than 20 years of service in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment, the disability has to be considered as attributable to and aggravated by 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. Thus in light of the well

settled law on attributability, the fact that 100% disability was granted by IMB temporarily only for 02 years and the fact that the soldier has already died, ends of justice will be met by accepting his first disability "LEFT MIDDLE CEREBRAL ARTERY TERRITORY INFRACTION WITH (RT) HEMIPARESIS" as attributability to military service and for grant of disability pension for his disability at the rate of 100%. However though Invaliding Medical Board had granted 100% composite disability only for two years, the next Resurvey Medical Board was effective only after five years i.e. 28.01.2000. Hence in the absence of any medical check up between Invaliding Medical Board of 1995 and Resurvey Medical Board (effective date is 28.01.2000) we are of the opinion that applicant's husband is entitled for 100% disability pension w.e.f his date of invalidation i.e. 16.03.1995 till 27.01.2000.

6. There is no denying of the fact that the Applicant was examined by the Resurvey Medical Board on 09.07.2004 which assessed the combined disability of the applicant as 40% for life with effect from 28.01.2000. The case of the Applicant is that his disability was assessed as 100% initially and subsequently it was reduced to 40% for life on both the counts under the influence of Medical Advisor (Pension), his disability is to be counted as 95% which on being rounded off would come to 100%. We have considered this argument.

The Applicant has not brought on record any document to vouch for the fact that his disability was 95% even after examination by Resurvey Medical Board. The report of Resurvey Medical Board is on record which clearly evinces that the combined disability of the Applicant was 40% for life. In the circumstances, we find it difficult to lap up the arguments being advanced at the behest of the applicant that his disability should be treated as 95%.

7. The only question that remains to be considered in the facts and circumstances is whether the disability which is assessed as 40% for life should be rounded off to 50% for life or not. Having considered the matter in the light of various decisions 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).

8. It has been brought to our notice that the Applicant breathed his last on 20.05.2016 and he is represented by his legally wedded wife who has already been substituted in place of deceased husband.

9. As a result of foregoing discussion, the O.A is partially allowed. The deceased husband shall be entitled to disability pension at the rate of 100% after his discharge i.e. 16.03.1995 till 27.01.2000 in terms of the recommendations of the Invalidating Medical Board. Further it is directed that the deceased husband shall be entitled to disability pension at the rate of 40% for life which on being rounded off would come to 50% for life with effect from 28.01.2000 till his death. 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. Since the husband of the Applicant has already died, the applicant shall be entitled to arrears.

10. No order as to cost.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: March, 05 , 2018
MH/-