

Court No. 2
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO 456 of 2017**

Monday, this the 12th day of February, 2018

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

819761, Ex – NC (E) Santa Singh Yadav, Mess Waiter,
R/O 226/24 F/2A, Sector-3, Adarsh Nagar, Alka Vihar,
Post Office Bamrauli, Allahabad (UP) - 211012

.....**Applicant**

Ld. Counsel for the : **Shri R.N. Pandey,**
Applicant **Advocate.**

Verses

1. The Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Air Staff, Air Head Quarter, Vayu Bhawan, Rafi Marg, New Delhi.
3. DPA, Air Headquarter, Vayu Bhawan New Delhi, 110106.
4. Director of Air Veterans, Air Head Quarters, Air Force Record Office Building, Subroto Park, New Delhi 110010.

.....**Respondents**

Ld. Counsel for the : **Shri Amit Jaiswal,**
Respondents **Advocate,** Central
Govt Standing Counsel
assisted by Wg Cdr Sardul
Singh, OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension.

2. The facts draped in brevity, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Air Force on 14.06.1988 in medically fit condition and was discharged from service with effect from 18.01.2009 under the clause at his own request after rendering total 20 years and 219 days of regular service. The Release Medical Board held before discharge assessed the disability ID (i) DM T-II (15-19%), ID (ii) Fracture (Rt) clavicle mid Shaft (15-19%) and ID (iii) Primary Hypertension (30%). The composite disability was assessed as 50% for life. The disability foresaid was opined to be neither attributable to nor aggravated by Air Force service. The case for disability pension was rejected vide letter dated 28.05.2009 and his first and second appeals were rejected vide orders dated 01.02.2011 and 30.09.2015 respectively.

3. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.

4. We have heard learned counsel for the parties and perused the material facts on record.

5. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit

condition and discharged in Low Medical Category, his disability should be considered as attributable to military service and he should be granted disability pension.

6. The respondents have not disputed that the applicant suffered disability to the extent of 50% for life, but submitted that the disability due to the disease mentioned above was considered as neither attributable to nor aggravated by military service, as such, in terms of Para 173 of Pension Regulations, his claim has correctly been rejected. Though initially, learned counsel for the respondents opposed on the ground that onset of disability had its genesis in peace station but subsequently he conceded that in view of various judgments of Hon'ble Supreme Court and Armed Forces Tribunal, the applicant is entitled to grant of disability pension.

7. 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 and the applicant is considered entitled for grant of disability pension.

8. 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.

9. In view of the above the Original Application deserves to be allowed.

10. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 50% for life, which would stand rounded off to 75% for life from the date of discharge. Applicant shall be entitled to arrears only w.e.f. 11.04.2014 i.e. the date of three years prior to the filing of this O.A. 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.

11. No order as to cost.

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

Dated: February, 12 , 2018

MH/-