

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 217 of 2018**Thursday, this the 03rd day of January 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No. 157014821L Ex Signalman Ramesh Singh, Son of Ram Shankar Kushwaha, Village-Chairaura, Post-Raipur (Kukhat), Tehsil-Akbarpur, Distt-Kanpur (Dehat) 209304.

..... Applicant

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

Versus

1. Union of India, Through Secretary Ministry of Defence, New Delhi.
2. Second Appellate Committee on Pension (SACP), Additional Director General of Personal Services 4 (Imp-II), Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110011.
3. Adjutant General's Branch, AGPS 4, Integrated Headquarters of Ministry of Defence (Army), New Delhi-110011.
4. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the
Respondents.:**Shri Yogesh Kesarwani**,
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The present O.A. has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007.

The applicant has sought the following reliefs:-

(i) To quash the rejection order of the Second Appellate Committee on Pensions rejecting the second appeal of the applicant bearing No. B/38046A/245/2017/AG/PS-4 (2nd Appeal) dated 27 Feb 2018 with all the consequential benefits to applicant.

(ii) To quash the rejection order of the first Appellate Committee on Pensions rejecting the first appeal of the applicant bearing No. B/40502/402/2015/AG/PS-4 (Imp-II) dated 10 Feb 2017 with all the consequential benefits to applicant.

(iii) To quash the rejection order of the Principal Controller of Defence Accounts (Pensions) Allahabad order rejecting disability pension of the applicant with all the consequential benefits to applicant.

(iv) To grant the benefits of the rounding off as catered for in the Government of India, Ministry of Defence, New Delhi policy letter No. 1(2)/97/I/D(Pen-C) dated 31 Jan 2001 with all the consequential benefits to the applicant.

(v) To issue any other order or direction considered expedient and in the interest of justice and equity.

(vi) Award cost of the petition.

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 03.12.2005 and was invalided out of service on 05.02.2014 after rendering 08 years and 62 days of service in terms of Rule 13 (3) III (i) of Army Rules 1954. At the time, the applicant was invalided out of service, he was in low medical category S5H1A1P2E1 for the disabilities '(i) Severe Depressive Episode without Psychotic Symptoms (F-32.2)-disability

@ 50% for life, (ii) Severe Head Injury (Old)-disability @ 20%, (iii) Simple Obesity (E-66)-disability @ 1-5% and (iv) Impaired Glucose Tolerance-disability @ 1-5%'. The composite disability of all the disabilities of the applicant was assessed @ 60% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 13.09.2014 on the ground of disability being NANA. Thereafter against rejection of disability pension claim, the applicant preferred first and second appeals which were rejected vide order dated 10.02.2017 and 27.02.2018 respectively. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disability prior to enrolment, therefore any disability suffered by the applicant after joining the service, should be attributable to military service and the applicant is entitled to grant of disability pension. In this connection, Ld. Counsel for the applicant has relied upon the judgment of Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) AIR SCW 4236, ***Union of India and Ors vs. Ram Avtar***, Civil Appeal No 418 of 2012

decided on 10th December 2014) and pleaded that the applicant is entitled to disability pension and its rounding off.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant, at the time of invalidation, was medically and physically examined and his disabilities were opined as NANA. Accordingly as per existing procedure and in consultation with medical authorities the disability pension claim and first and second appeals of the applicant were rejected being disability as NANA. The second ground taken by the respondents is that the onset of disease was in peace station. Ld. Counsel for the respondents further submitted that onset of Severe Depressive Episode without Psychotic Symptoms (F-32.2) was in Jun 2012 while the applicant was serving at Gangtok. The applicant was referred by medical specialist for cognitive decline where on investigation it was found that the aforesaid disability was suffered by the applicant on account of head injury dated 13.11.2010 sustained by him while returning to unit location after expiry of leave in which he remained in coma and unconscious (Comatose) for about 22 days.

5. Citing Rule 81 (a) of Pension Regulations for the Army 2008 (Part-I) Ld. Counsel for the respondents further

submitted that a service personnel who is invalided out of service on account of a disability which is attributable to or aggravated by such service may be granted a disability pension consisting of service element and disability element in accordance with the Rules but concluded that since in the instant case the disability of the applicant has been regarded as NANA by military service by the IMB, he is not eligible for grant of disability pension due to policy constraints. He pleaded the O.A. to be dismissed.

6. We have heard Ld. Counsel for the parties at length and have also gone through the IMB. The question before us is simple and straight i.e.-Is the disability of the applicant attributable to or aggravated by military service?

7. The primary reason given in the IMB for denying attributability is that the disease has originated while in peace and not in Fd/HAA/CI Ops tenure. It is submitted that Gangtok though not a field area is however a modified field area. We also find that earlier the applicant met with an accident while returning from leave and was admitted in hospital on 13.11.2010 due to severe head injury and he remained in comatose state for about 22 days. Presumably this may also be the cause of Severe Depressive Episode without Psychotic Symptoms (F-32.2) as this disease may have been triggered due to the head injury.

8. In medical literature there are many possible causes of Severe Depressive Episode without Psychotic Symptoms (F-32.2) and head injury is one of the possible causes of this disease. Therefore the disability 'Severe Depressive Episode without Psychotic Symptoms (F-32.2)' suffered by the applicant appears to be the resultant of severe head injury suffered by the applicant in 2010.

9. Additionally, 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*** (supra). 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)."

10. We have noted that while on one hand the respondents have declared the head injury of the applicant as NANA while on the other hand they have conceded in para 8 of the counter affidavit that the injury has been received while coming back to his unit i.e. "On 13.11.2010, individual met with a bike accident on his way back to unit. Individual had sustained severe head injuries". We have also noted that the medical documents contain clear reference of his being in a Comatose (unconscious) state for 22 days after accident and thereafter recovering partially and having problems in cognitive (memory and thinking)

skills. This accident was followed by depressive episode and obesity along with impaired glucose tolerance which has finally resulted in the applicant being invalidated out of service.

11. Thus it is clear that the root cause of all medical problems and disabilities of the applicant is the severe head injury received in an accident by the applicant. What bothers us is how has the circumstances of an accident been established from a person who is in comatose state for 22 days and after partial recovery has clear symptoms of decline of his cognitive skills. What could be the logic of respondents in declaring the head injury of applicant on one hand as NANA and on the other hand admitting in counter affidavit that the applicant was returning back to unit on a motor cycle. If the applicant was on leave as claimed and was returning back to unit on motor cycle then the resultant head injury should have been considered as attributable to service. However, the Ld. Counsel for the respondents could neither produce a Court of Inquiry (C of I) on the accident nor satisfy us as to why the head injury has been declared as NANA by respondents.

12. Be that as it may, we have also noticed that the medical opinion is clear that the Severe Depression Episode without Psychotic Symptoms (F-32.2) is the most prominent

disability of the applicant and out of a composite 60% disability, this itself is causing 50% of the disability to the applicant. The reason given in IMB is that this disease started in peace area hence not connected with military service, we find this very cryptic and unrealistic in the totality of the back ground of the applicant.

13. Considering all issued, we therefore feel that denial of attributability/aggravation to military service only on the ground that the disease started in peace area and not in Fd/HAA/CI Ops tenure amounts to being unfair to the applicant. Therefore we are of the considered opinion that considering the totality of circumstances, the benefit of doubt should be given to the applicant. Thus we consider applicant's disease of Severe Depressive Episode without Psychotic Symptoms (F-32.2) as aggravated by military service.

14. In view of the above, we are of the view that the applicant is held entitled to 50% disability for life which shall stand rounded off to 75% disability for life in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

15. As a result of foregoing discussion, the O.A. is **allowed**. The applicant shall be entitled to disability

pension @ 50% for life to be rounded off to 75% for life w.e.f. three years prior to filing of the O.A. in view of the pronouncement of the Hon'ble Apex Court judgment in the case of ***Shiv Dass Vs Union of India & Ors*** reported in 2007 (3) SLR 445. The O.A. was filed on 13.04.2018. The respondents are 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: January, 2019
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(Justice S.V.S. Rathore)
Member (J)