

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 258 of 2018

Tuesday, this the 08th day of January 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ashish Kumar Pandey (No. 15171368N Ex GNR) son of Dhruv Pandey, permanent resident of Village-Praskhan, Post Office-Kushinagar, District-Kushinagar (Uttar Pradesh)-274403.

..... Applicant

Ld. Counsel for the Applicant : **Shri Yash Pal Singh**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Directorate General, Personal Services/Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), PIN-90256, C/O 56 APO.
3. Officer-in-Charge Artillery Records, Nasik Road Camp, PIN-908802, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Mrs Anju Singh**,
Central Govt. Standing Counsel

ORDER

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

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

(a) Issue/pass an order or direction setting aside the letter/order dated 03.04.2013 issued by the Artillery Records (Annexure No. 1 to the Original Application); and appellate order/letter dated 07.05.2015 passed/issued by the Additional Directorate General, Personal Services/Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army) and communicated by the letter dated 19.06.2015 (Annexure No. 2 to the Original Application) rejecting the claim of the applicant for grant of disability pension, after summoning the relevant original records; and reassess the disability and grant disability pension extending the benefit of rounding off from due date including arrears thereof with interest.

(b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(c) Allow this Original Application with cost.

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 15.04.2004 and was invalided out of service w.e.f. 09.04.2012 after rendering about 08 years, of service in terms of Rule 13 (3) III (iii) of Army Rules 1954. At the time of invaliding out of service, he was in low medical category for the disabilities (i) Primary Hypertension, (ii) Depressive Episode and (iii) Alcohol Dependency Syndrome. Prior to his invalidation from service, the applicant was brought before an Invaliding Medical Board (IMB) held at Military Hospital, Meerut on 14.02.2012 which assessed 70% composite disability for life neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 03.04.2013. First

Appeal preferred against rejection of disability pension claim was rejected vide order dated 07.05.2015, 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 disease prior to enrolment, therefore any disability suffered by the applicant after joining the service should be attributable to military service in terms of para 423 (c) of Pension Regulations for the Army and the applicant is entitled to grant of disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any reason which is not sustainable in the eyes of law. Further submission of Ld. Counsel for the applicant is that the applicant during course of performance of duty was diagnosed to be suffering from medical disabilities due to stress and strain related to rigors of service conditions which may have led to occurrence of disability. He pleaded that though the onset/origin of the disease was during service in peace area but it may not be the sole ground for rejection of the case of the applicant for disability pension. Therefore the disability suffered by the applicant is aggravated by military service and he is entitled to disability pension.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant have been regarded

as NANA by the IMB hence he is not entitled to disability pension. He further stressed that in the instant case onset of disability was in a peace station and there is no close time association with stress/strain of service as associated with Field/High Altitude/Counter Insurgency Operations. Therefore, disability of the applicant has been conceded as NANA by the IMB. The Ld. Counsel for the respondents further submitted that in the instant case the Medical Advisor at PCDA (P) Allahabad after thorough study of medical/clinical reports as well as the history of the applicant did not find any causal connection of the disability with military service, therefore disability pension was declined by the pension paying authority in terms of Rule 173 of Pension Regulations for the Army, 1961 (Part-I). It was further submitted by the Ld. Counsel that the disability pension is not a bounty or fundamental right which is granted to all disabled personnel without meeting any required criteria. It was further averred that the disabilities of the applicant were viewed as NANA and not connected with service by the duly constituted IMB and the same was upheld by the competent pension sanctioning authority as well as the Appellate Committee on pension while rejecting his disability pension claim. The Ld. Counsel for the respondents admitted that disability pension is granted to a person who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or

above, but in the instant case the disabilities of the applicant were regarded as NANA by the IMB and the First Appellate Committee on pension. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the IMB and rejection order of the first appeal. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

6. This is a case where the applicant has been invalided out of service for three disabilities i.e.-primary hypertension, depressive episode and alcohol dependence syndrome. It is interesting to note that the first two disabilities i.e.-primary hypertension and depressive episode have first started in September 2008 at about 4^{1/2} years length of service whereas the third disability i.e.-alcohol dependence syndrome has first started in July 2011 after about 07 years and 03 months of service. We also find that the only reason specified in IMB for denying attributability/aggravation to military service for first two disabilities is that the onset of both these disabilities has been in peace area and not in any field/CI area/HAA. On scrutiny of the IMB we further find that the psychologist has linked the depressive episode of the applicant to stresses and triggers in his personal life.

7. Thus in the overall analysis we agree with the IMB that the disabilities No 2 and 3 i.e. depressive episode and alcohol dependence syndrome are not related with service and is hence NANA. However, we find that denying aggravation to military service for primary hypertension only on the ground that it has first started in peace area and not in a field or high altitude area or CI area amounts to not being fair to the applicant. Besides field/high altitude and CI area even peace area posting in military stations have their pressures and stresses on soldiers.

8. In any case 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*** reported in (2013) 7 Supreme Court Cases 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)."

9. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the onset of disability i.e. primary hypertension is in peace area with no close time association with stress/strain of service in Fd/HAA/CI Ops. We are therefore of the considered opinion that the benefit of doubt should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant i.e. primary hypertension should be considered as aggravated by military service.

10. In view of the above, we are of the view that the applicant is held entitled to 20% disability for life due to primary hypertension which shall stand rounded off to 50% disability for life in terms of ***Sukhwinder Singh vs Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC.

11. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 03.04.2013 and 07.05.2015 are set aside. The applicant's disability primary hypertension is considered as aggravated by military service and he shall be entitled to disability element @ 20% for life to be rounded off to 50% for life after his discharge. However, the arrears are to be restricted to three years prior to filing of the present application in terms of Hon'ble Apex Court judgment in the case of ***Shiv Dass Vs Union of India & Ors*** reported in 2007 (3) SLR 445. Date of filing of the present application is 19.12.2017. 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)

(Justice S.V.S. Rathore)
Member (J)

Dated: January, 2019
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