

RESERVED
COURT NO.1

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

TRANSFERRED APPLICATION No. 53 of 2017

Friday, this the 11th day of January, 2019

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

Raheem Khan son of Sri Hasan Khan, Resident of Village
& Post-Majhgawan, District-Hamirpur.

.....Petitioner

Ld. Counsel for the : **Shri Mohd Askari Ali**, Advocate.
Petitioner

Versus

1. Union of India through Secretary to Defence,
Central Secretariat, New Delhi.
2. Chief of the Army Staff, Army Headquarter, New
Delhi.
3. Officer Incharge, Artillery Records Office, Nasik
Road Camp, Nasik, Maharashtra.
4. Commanding Officer, 156 General Hospital, C/O 56
APO.

.....Respondents

Ld. Counsel for the: **Shri R.K.S. Chauhan**,
Respondents. Central Government Standing Counsel.

ORDER**“Per Hon’ble Air Marshal BBP SINHA, Member (A)”**

1. On account of denial of disability pension, the petitioner preferred Civil Misc Writ Petition bearing No. 24289 of 1988 in the Hon’ble High Court of Judicature at Allahabad which has been transferred to this Tribunal in pursuance to powers conferred under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 53 of 2017. The petitioner has sought the following reliefs:-

- (i) *A writ, order or direction in nature of mandamus commanding to opposite parties that the petitioner be declared as disabled Army Personnel due to injury sustained in his right hand’s index finger during duty hours and subsequently the benefits entitling to disabled person may be provided to petitioner in way of disabled pension etc. along with arrears from the date of release from army i.e. 13.07.76.*
- (ii) *A writ, order or direction in nature of mandamus further to opposite parties that the petitioner’s case be re-examined again on the basis of his service record available to opposite party No 3 and the petitioner be declared a disabled army personnel with all pensionary and other benefits.*
- (iii) *A writ, order or direction in nature of certiorari quashing the appellate order dated 3rd February, 1987 (Annexure No. 2) and the petitioner be provided all the benefits of disabled person along with its arrears according to the entitlement.*
- (iv) *A writ, writs, order or direction which this Hon’ble court deems fit and proper may also be awarded in favour of petitioner along with cost.*

2. Brief facts of the case are that the petitioner was initially enrolled in the Army as a cook on 25.01.1971 and subsequently his trade was changed from cook to driver (MT) w.e.f. 23.04.1971. While serving with 1482

(Indep) Light Battery the petitioner sustained severe injury in his right hand resulting in his hospitalization to 305 Field Hospital for the period 18.01.1975 to 21.01.1975 (four days) due to 'Fracture 2nd METACARPAL and ANXIETY NEUROSIS'. The petitioner was transferred to 155 General Hospital (GH) where he remained admitted till 10.03.1975 and his medical category was downgraded to CEE (temp) for six months w.e.f. 06.03.1975. The petitioner was further admitted to MH Jalandhar Cantt from where he was transferred to Command Hospital (Western Command), Chandigarh on 02.11.1975 where after holding Invaliding Medical Board (IMB) on 01.04.1976 he was finally invalided out of service w.e.f. 13.07.1976. Disability pension claim preferred by the applicant was rejected vide order dated 31.03.1977. Appeal preferred against rejection of disability pension claim also met with the same fate vide order dated 30.04.1977. Final appeal preferred to Defence Minister's Appellate Committee was also rejected vide order dated 03.02.1987. Hence this petition.

3. Ld. Counsel for the petitioner submitted that the petitioner sustained serious injury and fracture in his right hand while performing military duty in MT Store on 18.01.1975. The petitioner was admitted in MH, Tezpur

and while admission in Surgical Ward he was transferred to MH, Guwahati on 27.01.1975 where after due treatment he was recommended to be in medical category 'CEE' (temp) for six months. Thereafter on 27.09.1975 the petitioner was sent to General Hospital (GH), Firozpur for re-categorization medical board. It is alleged that MH, Firozpur transferred the petitioner to Mental Hospital, Jalandhar where his disability was converted from injury to mental sickness. Ld. Counsel for the petitioner further submitted that the respondents have manipulated the case of the petitioner under malafide intention in utter violation of Army Rules and forced the petitioner to be treated in mental ward irrespective of the injury suffered by him on bonafide military duty to deprive him receive disability pension. The medical authorities recommended the petitioner to be discharged from service on account of disability "Anxiety Neurosis 300" neither attributable to nor aggravated by military service (NANA) and ultimately he was invalided out of service w.e.f. 13.07.1976 with 40% disability for two years. The Ld. Counsel further submitted that since the petitioner sustained injury while on duty, he is entitled to receive disability pension.

4. On the other hand Ld. Counsel for the respondents admitted that the petitioner sustained injury on the back

of right hand when a heavy machine fell over it while performing duty at MT Store and he was admitted in 305 Field Hospital on 18.01.1975. The petitioner was transferred to 155 General Hospital (GH) where he remained admitted till 10.03.1975 and after prolonged medical treatment he was downgraded to medical category 'CEE (temporary)' for six months w.e.f. 06.03.1975. After discharge from the hospital he was directed to proceed to Artillery Depot Regiment where he reported late and awarded punishment i.e. confinement to lines for 10 days. The Ld. Counsel further submitted that on account of pain in 2nd Metacarpal bone, pain and stiffness in both knee and weakness/giddiness, the petitioner was admitted to MH, Jalandhar from where he was transferred to Command Hospital (Western Command), Chandigarh on 03.11.1975 where on holding Invaliding Medical Board (IMB) the petitioner was recommended to be invalided out of service in low medical category due to disability 'Anxiety Neurosis 300'. Accordingly, he was invalided out of service in terms of Rule 13 (3) III (iii) of Army Rules, 1954. The disability of the petitioner was regarded @ 40% for two years and NANA. The Ld. Counsel further averred that claim for grant of disability pension and appeals have been

rejected being the case as NANA. He pleaded the T.A. to be dismissed.

5. We have given our anxious thought to the material placed on record and the arguments by both the Ld. Counsels. From the pleadings on record and averments made by both the counsels, we are of the considered view that the petitioner was performing military duty on 18.01.1975 when he sustained injury in his right hand by a heavy machine which fell over his hand in MT Store causing serious injury and fracture. This aspect is clear in the IMB and has also been conceded by the respondents in para 6 of their counter affidavit. We find that though IMB has mentioned two disabilities of the applicant i.e. 'Fracture Second Metacarpal' and 'Anxiety Neurosis 300', however it is by and large silent on 'Fracture Second Metacarpal' and has restricted its opinion and disability percentage only on 'Anxiety Neurosis 300'.

6. Be that it may, on careful perusal of the IMB it is borne out that the disability 'Anxiety Neurosis 300' for which the applicant has been invalided out of service, is a direct result of the serious injury and fracture received in the right hand of the petitioner from which he could not recover fully despite prolonged treatment in various military hospitals. This view has also been corroborated by the Psychiatrist who endorsed summary of the case of

the petitioner in the IMB on 02.11.1975 when the petitioner was admitted in Command Hospital, Chandigarh. Relevant extracts of the summary are excerpted below:-

"xxxxx *Diagnosis-Anxiety Neurosis 300.*

Date of Admission: 2.11.75.

Complaints

(i) *Pain Rt hand and fingers.*

(ii) *Aches and pain and stiffness both knees.*

(iii) *Weakness and giddiness.*

*Duration- **about one year-precipitating factor- Injury Rt hand***

History of Present Illness- Gradual onset. Aches and pain are present at the time. Feels weak and giddy. He cannot do heavy work. Remains preoccupied with his multiple aches and pain and at times his sleep is disturbed. Following fracture Rt Second metacarpal in Jan 1975 he has been in Medical Category CEE. X x x x x x

Past Illness- Nil relevant.

Family History- x x x x x x. No history of psychiatric breakdown in the family.

*Personal History- x x x x x. He has been punished twice and now **fears that he would be punished again and sent home.**"*

(Bold & underlined by me)

7. It is a well known fact that in the Army, a jawan can be removed as undesirable soldier if he earns more than four red ink punishment entries. Thus the fear of the applicant of his livelihood of being sent home is real and the summary of case by Psychiatrist clearly establishes the fact that 'Anxiety Neurosis 300' has a direct relation with previous grievous injury in the right hand of the petitioner.

8. It is also pertinent to mention that the petitioner had filed the writ petition in the Hon'ble High Court in the year

1988 at the age of 40 years but due to negligence on the part of the respondents and for no fault of the petitioner, counter affidavit has been filed in the year 2018 i.e. after an inordinate delay of approx 30 years and by now the petitioner must have reached at the age of 70 years.

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 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. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing a cryptic sentence that the disability 'Anxiety Neurosis 300' is constitutional in nature and is not affected by service conditions whereas it is evidently clear that this disability is the resultant of severe injury and fracture earlier suffered in the right hand of the petitioner while on military duty.

11. Thus after taking the entire circumstances in picture, we are 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 'Fracture 2nd Metacarpal' is attributable to military service and 'Anxiety Neurosis 300' is to be considered as aggravated by military service.

12. T.A. No. 53 of 2017 is **allowed**.

13. In view of the above, we are of the view that the applicant is held entitled to 40% disability pension for two years w.e.f. 13.07.1976. However, the arrears of service element of disability pension are to be restricted to three years prior to filing of the present petition 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 petition originally in the Hon'ble High Court is 20.12.1988. Additionally the respondents are to conduct a fresh RSMB for the petitioner. His future entitlement to disability element will depend upon the outcome of RSMB. 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 cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: January, 2019

gsr

(Justice SVS Rathore)
Member (J)