

E- Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 429 of 2019

Monday, this the 26th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15167412-P, Ex Naik, Khemraj, Son of Shree Siya Ram,
R/o Vill- Gountara, Post Office C.B. Ganj, Tehsil- Meerganj,
Distt- Bareilly, Uttar Pradesh Pin – 243502.

.....Applicant

Ld. Counsel for : **Shri Manoj Kumar Awasthi and**
Applicant **Shri Anshuman Srivastava,**
Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi 110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (ARMY), DHQ PO, New Delhi - 110011.
3. The Officer In- Charge Record Office Artillery Nasik Road Camp, PIN- 422401 (Maharashtra).
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Ld. Counsel for the : **Shri DK Pandey,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) To issue pass an order or directions to set aside quash the impugned order dated 28.02.2019/ No. 15167412P/DP-75461/Pen-2 and letter no. S15167412P/Initial/Pen-2 (T-1) dated 24.01.2019.

(b) To issue pass an order or directions to the respondents to grant disability element of disability pension @ 20% for life from the date of discharge i.e. 01.12.2018 along with 12% interest on arrear.

(c) To issue pass an order or directions to the respondents to grant benefit of rounding off disability element of disability pension 20% to 50% for life from date of discharge i.e. 01.12.2018 in light of Hon’ble Apex Court judgments Union of India Versus Ram Avtar and Government of India, MoD letter dated 31.01.2001 in the interest of justice.

(d) Any other relief which the Hon’ble Tribunal may deem just and proper in the fact and circumstances of the case is also granted along with cost of the O.A.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 02.09.2003 and was discharged from service on 01.12.2018 in low medical category P2 (Permanent) under item 13 (3) III (iii) (a) (i) of Army Rules,

1954 on completion of terms of engagement. At the time of discharge Release Medical Board held at Military Hospital Jhansi on 03.09.2018 assessed disability "**CEREBELLAR MEDULLOBL ASTOMA (OPTD)**" @ 20% for life and considered as neither attributable to nor aggravated by the military service. The petitioner was granted service pension from the date of retirement. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 28.02.2019 being neither attributable to nor aggravated by military service and not related to military service. His appeal for grant of disability pension was also rejected vide letter dated 31.01.2019. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he has been discharged from service in Low Medical Category assessed as 20% for life and considered as neither attributable to nor aggravated by military service. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 20% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was assessed @ 20% for life but disability qualifying for disability pension has been assessed as NIL for life and disability is found as neither attributable to nor aggravated by military service and not connected with military service, therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. 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)."

8. Thus, considering all issues we have noted that Release Medical Board had not given any reason in support of its opinion, particularly there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for Military service. In absence of any evidence on record to show that the applicant was suffering

from disease at the time of acceptance of his service and the fact that the applicant had put in over 07 years of service when for the first time the disease was detected in the year 2009, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to military service. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service.

9. 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. Hence the applicant is eligible for the benefit of rounding off also.

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

11. Accordingly O.A. is **allowed**. The impugned orders rejecting the claim for grant of disability pension passed by the

respondents are set aside. The disability assessed @ 20% for life is to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant from the date of discharge @ 20% for life which would stand rounded off to 50% for life. 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 @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 26 July, 2021

UKT/-