

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 199 of 2019

Friday, this the 6th day of July, 2021

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

Ex Hav Balwant Singh (No. 14391170K) s/o Sri Gopal Singh House No 185/2, Dobhalwala, P.O. GPO Dehradun Tehsil & District, Dehradun (Uttarakhand)

.... Applicant

Ld. Counsel for the: **Col AK Shrivastava (Retd), Shri Dharam Raj Singh and Shri Shyam Sunder Bajpai,**
Applicant Advocate.

Versus

1. The Secretary, Govt of India (MoD) South Block, DHQ P.O. New Delhi -110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army) South Block, DHQ P.O. New Delhi.
3. The Record Officer, Records Army Air Defence.
4. The Principal Controller of Defence Accounts PCDA (P), Draupadi Ghat, Allahabad (U.P.) 211014.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal,** Advocate
Respondents.

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(a) Issue/Pass an order or direction of appropriate nature to the respondents to set aside Records Army Air Defence letter No AA/14391170/DP-1042/Pen dated 04.11.2011 and second appeal dated 16.09.2014 (A-2) communicating the applicant that competent authority had rejected his disability pension claim since his disabilities were neither attributable to nor aggravated by service as endorsed in Release Medical Board Proceedings (**Annexure No. A-4**) which rejected disability pension claim, in respect of the applicant, considering his disabilities neither attributable to nor aggravated by service.

(b) Issue/Pass an order or direction of appropriate nature to the respondents to set aside remarks endorsed in Part-V of RMB proceedings (**Annexure No. A-1**) that applicant's disabilities were neither attributable to nor aggravated by service, ignoring the fact that applicant suffered with said disabilities after rendering of 26th year of strenuous military service in different terrains hazardous to health.

(c) Issue/Pass an order or direction of appropriate nature to the respondents to consider 60% Composite disability of the applicant due to (i) **ESSENTIAL HYPERTENSION (30%)**, (ii) **DM TYPE-II (20%)** and (iii) **DYSLIPIDEMIA (15-19%)** for life, attributable to or aggravated by service since he suffered with said disabilities after rendering of 26th years of service and did not have any disability at the time of enrolment and said aspect has already been adjudicated by Hon'ble Supreme Court in *Dharamvir Singh v, Union of India*, (2013) 7 SCC 316.

(d) Issue/Pass an order or direction of appropriate nature to the respondents to grant 60% disability pension to the applicant, duly rounded off to 75 % for life w.e.f. 01.10.2011 in terms of MoD letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 which is supported by the judgment of Hon'ble Supreme Court in Civil Appeal No. 5591 of 2006 Titled as *KJS Butter v U.O.I. and Ors*, Civil Appeal No 418 of 2012 Titled *U.O.I. & Ors.v Ram Avtar*.

(e) Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 10.09.1985 and after having served for more than 22 years, he was discharged from service in low medical category '**S1H1A1P3(P)E1**' on 01.10.2011. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 21.09.2011 which assessed applicant to be suffering from (i) **ESSENTIAL HYPERTENSION (30%), (ii) DM TYPE-II (20%) and (iii) DYSLIPIDEMIA (15-19%)** for life neither aggravated by military service nor attributable to military service (NANA). Disability pension claim was rejected vide order dated 04.11.2011. Thereafter applicant preferred first and second appeal which were also rejected vide order dated 03.08.2012 and 16.09.2014 respectively. This O.A. has been filed for grant of disability pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army Air Defence Corps on 10.09.1985 after selection process and being found fit in all respect during detailed medical examination. The applicant had undergone rigorous training and was attested on 31.01.1987 and was retired on 01.10.2011 after having successfully completed 26 years of Army Service. Applicant always carried out tasks assigned to him with sincerity and dedication to the utmost satisfaction of his seniors even after onset of his aforesaid disability. With regard to suffering from any disease prior to enrolment, therefore, any disability suffered by the applicant after joining the service

should be considered as either attributable to or aggravated by military service and the applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. He pleaded for disability pension to be granted to applicant.

4. The applicant had submitted first appeal dated 15.02.20012 against rejection of his disability pension to IHQ of MoD (Army) AG's Branch which rejected the appeal stating that the disease was of idiopathic origin with strong genetic influences with no service related cause and the on set was in peace station.

5. The applicant also preferred second appeal which was also rejected stating that it was life style disorder and there is no close time association of the disease with service in Fieled/HAA/CI Ops Area.

6. On the other hand, learned counsel for the respondents submitted that since RMB has declared the applicant's disabilities as NANA, he is not entitled to disability pension. His further submission is that the competent authority has rightly rejected applicant's disability pension claim on the ground of disabilities being detected during peace posting, hence NANA and being not related to military service, therefore, O.A. deserves to be dismissed.

7. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and

straight i.e. – is the disability of applicant attributable to or aggravated by military service?

8. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. 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/aggravation, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing that the disabilities of applicant are genetic origin and are life style related having no close time association with stress/strain of service in Fd/HAA/CI Ops. We feel that such a discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there are no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently, and, unless proved to the contrary to be a consequences of military service. The benefit of doubt, therefore, shall be rightly extended in favour of the applicant. In the instant case, since the applicant was found to be suffering from disabilities when he had put in more than 25 years of service, these should be considered as aggravated by military service.

