

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 247 of 2019

Friday, this the 2nd day of July, 2021

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

No 138888480W Ex Nk Kirpal Singh S/O Sri Pool Singh, R/O Vill
New Mandi Grah Road, PO, New Mandi, Distt – Hapur (UP).

.... Applicant

Ld. Counsel for the: **Shri KK Misra**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters New Delhi.
3. Office-in-Charge, ASC Records, Bangalore, (South).
4. Principal Controller Defence Account (Pension), Draupadi Ghat, Allahabad (U.P.) 211014.

... Respondents

Ld. Counsel for the: **Shri Rajiv Pandey**, 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) To direct the respondents to grant 20% disability pension to the applicant as per his entitlement from the date of his discharge from service, i.e. 31 Dec 2002.
- (b) To round of this percentage of disability pension to 50% as per the policy on the subject.
- (c) To direct the respondents to pay the arrears of disability pension with interest as applicable.
- (d) Any other relief which the Hon'ble Tribunal may consider appropriate may be granted in favour of the applicant.
- (e) Cost of the applicant be awarded to the applicant.

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 31.12.1980 and after having served for more than 22 years, he was discharged from service in low medical category 'S1H1A1P2(P)E1' on 31.12.2002. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 06.08.2002 which assessed applicant to be suffering from '**CNS (INV) SEIZURE OLD 345**' @ 20% for life neither aggravated by military service nor attributable to military service (NANA). Disability pension claim was rejected vide order dated 30.06.2003. In this case no appeal has been preferred and 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 in medically and physically fit condition and there is 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 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. Further submission of learned counsel for the applicant is that the aforesaid disease is due to stress and strain related rigors of military service, therefore it should be considered as aggravated by military service. He pleaded for disability pension to be granted to applicant.

4. On the other hand, learned counsel for the respondents submitted that since RMB has declared the applicant's disability 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 disability being constitutional in nature and being not related to military service, therefore, O.A. deserves to be dismissed.

5. 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?

6. 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)."

7. 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 disability of applicant 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 is 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 disability when he had put in more than 18 years of service, it should be considered as aggravated by military service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above the applicant is held entitled to 20% disability element for life which shall stand rounded off to 50% disability element for life with effect from the date of his discharge in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). But due to law of limitations as held in the Hon'ble Apex Court judgment in the case of Shiv Dass vs Union of India & Ors,

