

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 287 of 2020

Wednesday, this the 07th day of July, 2021

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

No. 4165945-L Ex Nk Bhawan Singh, S/O Late Sher Singh, R/O Village-Gothana, Post-Bungachina, Tehsil-Didihat, P.S.-Didihat, District-Pithoragarh, Uttarakhand

.... **Applicant**

Ld. Counsel for the: **Shri Manoj Kumar Awasthi, Advocate**
Applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi.
3. The Officer-in-Charge, The Kumaon Regiment, PIN-900473, C/O 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

... **Respondents**

Ld. Counsel for the: **Shri RC Shukla, Advocate**
Respondents Central Govt Counsel.

ORDER (Oral)

1. Aggrieved by the impugned orders dated 01.10.1999, 08.09.2005, 30.08.2007 and 27.03.2009 denying him disability element of pension, the applicant has filed the instant O.A. seeking the following reliefs:

- “(a) To issue/pass an order or direction to set-aside/quash the order Nil dated, order No. GTS/ORS/DPA/U.R./84 dated 01.10.1999, order dated 08.09.2005, order dated 30.08.2007 and order dated 27.03.2009 passed by respondents, which are attached as Annexure No A-1, A-2, A-3, A-4 and A-5 to this Original Application.
- (b) To issue/pass an order or direction to the respondents to grant the disability element of disability pension @ 30% and benefit of rounding off disability pension @ 30% to 50% for two years from date of discharge 30.05.1990 along with 12% interest on arrear in light of Hon’ble Apex Court judgments of Sukhwinder Singh vs Union of India & Ors and Union of India vs Ram Avtar.
- (c) To constitute Re-Survey Medical Board to re-assess the present medical condition of applicant and if any disability percentage would assess then grant disability element of disability pension from 01.06.1992 in proposed assessment.
- (d) To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- (e) To allow this original application with costs.”

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 24.05.1974 and was discharged from service on 30.05.1990, in low medical category on compassionate grounds prior to completion of terms of engagements. The Release Medical Board (RMB) has assessed his disability ‘**Neurosis 300 V-67**’ @ 30% for two years neither

attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 27.09.1999. Thereafter various representations/appeals preferred by the applicant including to Defence Pension Adalat, Secretary, Govt of India, Min of Defence and Prime Minister's Office for grant of disability element of pension were rejected. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the action of the respondents in denying disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others***, (2013) 7 SCC 316, and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial enrolment medical board and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by military service and he is entitled to get disability pension @ 30% and the same is to be rounded off to 50%.

4. On the other hand, learned counsel for the respondents submitted that the RMB had assessed the disability of the applicant @ 30% for two years, it opined that the disability is NANA. He further submitted that since the applicant took premature discharge at his own request and his disability being a constitutional disorder affecting higher mental functions is not

connected with military service, his claim for grant of disability element was not preferred to PCDA (P), Allahabad. As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant O.A. does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disability of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability '**Neurosis 300 V-67**' has been opined as NANA by the RMB is that the disease is constitutional in nature affecting higher mental functions. However, on further scrutiny, we have observed that the applicant's disability was first detected in May 1978 i.e. after about 04 years of service and prior to that the applicant was not suffering from any ailment. It is also worthwhile to mention that despite mental ailment, applicant managed to serve for twelve years more from the date the disease was detected. We are of the opinion that benefit of doubt must go in favour of the applicant. Thus, we are of the considered opinion that the disability '**Neurosis 300 V-67**' is to be considered as aggravated by military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra).

7. The disability '**Neurosis 300 V-67**' has been recommended by the Medical Board, in its wisdom, for two years only.

Therefore, as per para 10 of Ministry of Defence letter dated 07.02.2001 a fresh RSMB will have to be conducted by the respondents to assess his present medical category. In this connection we are of the opinion that a Medical Board is the best agency to take a call on the duration after which the disease needs review. Additionally, the opinion of Medical Board and the percentages of disability in the Medical Board have direct correlation with financial benefits accruing out of a disability, hence, it is important that Medical Board reaches a final opinion. The respect for expertise of a Medical Board has been clarified by Hon'ble Supreme Court in its judgment dated 03.10.2019 in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India & Ors***, decided on 03.10.2019. Relevant part of the aforesaid judgment is as given below:-

“21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board.”

8. Resultantly, the O.A is **partly allowed**. The impugned orders are set aside. The applicant's disability '**Neurosis 300 V-67**' is to be considered as aggravated by military service. The applicant is entitled to disability element of disability pension @ 30% for two years from the date of his discharge from service. However, the applicant has approached this Tribunal after a huge delay, hence, due to law of limitations settled by

the Hon'ble Supreme Court in the case of ***Union of India vs. Tarsem Singh reported in 2009 (1) AISLJ 371***, the arrears of disability element will be restricted to three years before the date of filing of the instant O.A. The date of filing of this O.A is 08.05.2019. Thus, in sum and substance, the applicant will not be entitled to any arrears on his disability element for the period of two years after his discharge. The applicant is already in receipt of service element of pension for life. The respondents are directed to conduct a Re-Survey Medical Board (RSMB) for the applicant and his future entitlement to disability element will depend upon the outcome of the RSMB. Respondents are directed to give effect to this order within four months from the date of receipt of a certified copy of this order.

9. No order as to costs.

10. Pending application(s), if any, also stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 07.07.2021
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