

Court No. 1

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

Original Application No. 664 of 2017

Thursday, this the 1st day of July, 2021

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

Ex Sepoy Ashok Kumar Singh (Army No. 4198818-W Son of Shri Balwant Singh, R/O Village – Bagrighat, Post Office – Titri, Tehsil – Didihat, District – Pithoragarh (Uttarakhand), Pin Code - 262541.

.... Applicant

Ld. Counsel for the: **Shri KKS Bisht**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block New Delhi - 110011.
3. Office-in-Charge Records, The Kumaon Regiment, Pin – 900473, C/O 56 APO.
4. Principal Controller Defence Account (Pension), Draupadi Ghat, Allahabad (U.P.) 211014.

... Respondents

Ld. Counsel for the: **Dr. SN 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) Issue/pass an order or direction to the respondents to quash/Set-aside the arbitrary and illegal order passed by Records, respondent No. 3 communicated vide letter No. 4198818/DP dated 03 July 2012 (Annexure No. A-1) rejecting the disability pension claim of the applicant.

(b) Issue/pass an order or direction of appropriate nature to the respondents to grant 40% disability which after rounding of will be 50 % disability pension to the applicant with effect from the date of his discharge i.e. 24.10.2011 (AN) along with arrears of disability pension with interest at the rate of 18% per annum.

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

(d) Allow this application with costs.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 16.05.2002 and after having completed more than 09 years of service, he was invalided out from service in low medical category 'S5H1A1P1E1' due to disabilities (i) **“OTHER REACTIONS TO SEVERE STRESS”** (ii) **“INTENTIONAL SELF HARM”** on 24.10.2011(AN). Prior to discharge from service, applicant was brought before Invaliding Medical Board (IMB) held on 19.09.2011 which assessed him to be suffering from (i) **“OTHER REACTIONS TO**

SEVERE STRESS” (ii) “INTENTIONAL SELF HARM” @ 40% for life and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 03.07.2012 on the ground of NANA and not connected with military service. In this case no appeal seems to have been preferred and this O.A. has been filed for grant of disability pension.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that applicant, in July 2011 while posted at Ranikht, was diagnosed to be suffering from (i) **“OTHER REACTIONS TO SEVERE STRESS”** (ii) **“INTENTIONAL SELF HARM”**. These diseases, he feels, are due to stress and strain related to rigors of military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the IMB has declared the applicant’s disability as NANA,

therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of IMB declaring the diseases as NANA on grounds of the disease having no relation to service conditions. The learned counsel for the respondents drew our attention to the report of the Classified Specialist (Psy) of Military Hospital (MH) Bareilly at Annexure CA-I where the history of the disease is explained and cause is mentioned as originating due to an extra marital relationship of the soldier.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB 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 IMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'psychiatric disease having no relation with military service'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in 06.07.2011 i.e. after completion of about 09 years of his 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. Prima Facie, it appears that prior to conducting invaliding medical board (IMB) the unit authorities had filled form No AFMSF-10 and based on that medical authorities have investigated and found him to be suffering from the aforesaid diseases.

9. In view of the above, applicant is held entitled to 40% disability pension for life which shall stand rounded off to 50%

disability pension for life from the date of his discharge i.e. 24.10.2011.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 03.07.2012 is set aside. The disability of the applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is extended. As far as payment of arrears of disability pension is concerned, Hon'ble the Apex Court in the case of ***Shiv Dass vs Union of India & Ors*** reported in 2007 (3) SLR 445 has held that arrears of disability pension are restricted to three years prior to filing of the O.A. if the same is filed belatedly and delay is condoned. Since this O.A. was filed on 11.10.2017, applicant is entitled to disability pension alongwith arrears w.e.f. 11.10.2014. Default will invite interest @ 8% p.a.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

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

Dated: 01 July, 2021
rspal