

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 742 of 2020**Thursday, this the 15th day of July 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 6496620K Ex Sep/ASH Jitendra Kumar Saroj, son of Munder Prasad Saroj, R/O Village and Post-Korrahi, Tehsil-Jethwara, District-Pratap Garh, U.P. India-230129.

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Headquarters, New Delhi-110011.
3. The Officer-in-Charge Record Office, ASC Records, PIN-900493, C/O 56 APO.
4. The PCDA (Pension), Draupadi Ghat, Allahabad, Pin-211014. (Prayagraj)

.....Respondents

Ld. Counsel for the Respondents. : **Shri Vishwesh Kumar**, Advocate
Central Govt. Counsel

ORDER (Oral)

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

- (a) *To issue/pass an order or directions to set-aside/quash the order No 6496620K/DP/Pen dated 17.10.2019 passed by respondent No 3.*
- (b) *To issue/pass an order or direction to the respondents to grant disability element of disability pension for life @ 20% from date of discharge i.e. 04.07.2019 in view of Hon'ble Supreme Court judgments cited above and pay due arrears including consequential benefits with interest @ 12% p.a. on arrear till final payment is made.*
- (c) *To issue/pass an order or direction to the respondents to grant benefit of rounding/broad banding off disability pension from date of discharge i.e. 04.07.2019 @ 20% to 50% along with 12% interest on arrear in the light of judgment and order of Hon'ble Apex Court and Hon'ble AFT (RB), Lucknow.*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case is also granted along with cost of the O.A.*
- (e) *To allow this original application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 08.07.2003 and invalided out from service on 04.07.2019 in low medical category S5 for disability '**Generalized Seizure**'. Medical history reveals that while applicant was posted at Gaya (Peace Station), he suffered with 'Generalised Seizure' on 26.02.2008 and was placed in low medical category 'P2 (Temp)' and psychiatric treatment was provided. His re-categorization medical boards were held frequently starting from the year 2008 to the date of invalidation and he remained in low medical category. On 25.10.2016 applicant was found to be suffering from 'Alcohol Dependence Syndrome (F-10.2)' and his medical category was downgraded to 'S3 (T-24)' w.e.f. 07.12.2016 while he was posted at Binnaguri (peace

station). After providing counselling and medication, he was upgraded to medical category 'S1' from 'S3 (T-24)' w.e.f. 25.10.2018. Prior to invalidation from service, applicant was brought before Invaliding Medical Board (IMB) held at Command Hospital, Chandigarh on 29.05.2019 which assessed the applicant's disability 'Generalized Seizure' @ 20% for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 17.10.2019 with an advice to prefer first appeal to the Appellate Authority but applicant has preferred no appeal and filed this O.A. for grant of disability element of pension. Applicant is in receipt of service element of pension vide PPO No. 181202000183 (suffix 2100). It is worthwhile to mention that IMB has not been placed on record by either of the parties and only re-categorization medical boards are on record.

4. 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 the applicant after joining the service should be considered as either attributable to or aggravated by military service in terms of Pension Regulations for the Army, 2008 and applicant should be entitled to disability element of pension. Ld. Counsel for the applicant further submitted that disability pension claim of the applicant has been rejected on the ground of NANA without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that the

applicant has been suffering from 'Generalized Seizure' w.e.f. the year 2008 for which he was placed in low medical category since then and undergone various re-categorization medical boards. This disease, he feels, is due to stress and strain related rigors of military service. He concluded by pleading for grant of disability element of pension to applicant.

5. On the other hand, submission of Ld. Counsel for the respondents is that since applicant's aforementioned disability has been assessed as NANA by pension sanctioning authority, therefore, his disability element pension claim has rightly been rejected by the respondents. His further submission is that the only ground of rejection of the claim is primarily due to disability being NANA.

6. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone the rejection order of disability element pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

7. Before proceeding further, we feel it appropriate to mention that applicant had suffered with two disabilities i.e. 'Seizure Disorder' (w.e.f. 2008) and 'Alcohol Dependence Syndrome' (w.e.f. 2016). During various re-categorization medical boards applicant was upgraded to medical category S1 for disability 'Alcohol Dependence Syndrome' in the year 2018 and this medical category remained the same till his invalidation out of service due to 'Seizure Disorder' which

means the applicant was suffering from 'Seizure Disorder' at the time of invalidation.

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 ASC Records have denied attributability/aggravation to the applicant only by endorsing the disease as NANA without mentioning any reason thereto. 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 the year 2008 i.e. after completion of about 05 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.

10. In view of the above, applicant is held entitled to 20% disability element for two years which shall stand rounded off to 50% disability element for two years 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).

11. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order dated 17.10.2019 (Annexure No 1 to the O.A.), is set aside. The disability of the applicant is to be considered as aggravated by military service @ 20% for two years and the benefit of

rounding off to 50% is extended. The respondents are directed to pay disability element to applicant within a period of four months from today. The respondents are also directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

12. Default will invite interest @ 8% p.a.

13. No order as to costs.

14. Misc applications, pending if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 15 July, 2021

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