

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 255 of 2019****Friday, this the 9th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Devendra Kumar Sharma (Ex. No. 14392829-N) Rank-Hav, Son of Late Sri Poashaki Lal Sharma, resident of House No. 204, New Meera Ji Ki Choki, District – Badaun, U.P. – Pin – 202521, Mobile No. 9758228977.

.... Applicant

Ld. Counsel for the: **Shri Lal Chandra Sahu**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence New Delhi.
2. The Directorate General Medical Services, Army Headquarter, New Delhi.
3. Commandant/Chief Record Officer, Topkhana Abhilekh, Artillery Records, PIN-908802 C/O 56 APO.
4. Director, P.S.-4, AG's Branch, Integrated H.Q. of M.O.D. (Army) D.H.Q, P.O. – New Delhi-110011.
5. P.C.D.A. Pension Draupadi Ghat Allahabad-14.

... Respondents

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

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) The Hon'ble Tribunal may please to set aside the order dated 05.06.2003 passed by P.C.D.A. (P) Allahabad (Summon the record as order dated 05.06.2003 is not with the applicant).

(b) The Hon'ble Tribunal may please to set aside the order dated 24.06.2016 passed on the second appeal of the applicant (Annexure No. 1 to the Compilation-I of the Original Application).

(c) The Hon'ble Tribunal may please to direct the respondents to grant 20% disability pension with rounding off benefit.

(d) The Hon'ble Tribunal may please to issue order or direction to the respondent to which this Hon'ble Tribunal may deem fit and proper under 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 26.10.1985 and after having served for more than 17 years, he was discharged from service in low medical category 'S1H1A1P2E1 (P)' on 01.12.2002. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 14.09.2002 which assessed the applicant to be suffering from '@ 20% for life. Disability assessed neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by applicant was rejected vide order dated 24.06.2016. Thereafter, applicant preferred first and second appeals for grant disability pension were also rejected vide orders dated 05.06.2016 and 26.06.2016 respectively. The applicant is in receipt of service element of pension vide PPO No S/40996/2002. In this perspective this O.A. has been filed for grant of disability element.

3. Learned counsel for the applicant submitted that the 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 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 since the aforesaid disease is due to stress and strain related rigors of military service, these should be considered either attributable to or 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 originated in peace area 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 arose in peace area and the said disability 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 13 years of service, it should be deemed to be 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 250% 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, reported in 2007 (3) SLR 445, applicant is entitled to arrears of disability element three years preceding the date of filing this O.A. This O.A. was filed on 04.04.2018. The applicant is already in receipt of service element.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The respondents are directed to pay 50% disability element alongwith arrears within four months from today. Default will invite interest @ 8% p.a.

10. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 9th July 2021
rspal/-