

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 239 of 2021**

Monday, this the 19th day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14242262X Ex. Nk. Dhurvijai Singh, Son of Amir Singh, R/o Village – Lahrau, Post Office – Nagla, Khangar, District Firozabad, U.P.-205142.

..... Applicant

Ld. Counsel for the : **Shri Bhanu Pratap Singh**, Advocate,
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. The Chief of the Army Staff, Headquarters, New Delhi-110011.
3. The Officer-in-Charge Records, Signals, PIN-908770, C/o 56 APO.
4. The PCDA (Pension), Draupadi Ghat, Allahabad-211014 (Prayagraj).

.....**Respondents**

Ld. Counsel for the : **Ms. Anju Singh**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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. P/14242262/DP-4/NER Dated 04.04.2003 as Annexure no. 01 to this original application.*
- (b) To issue pass an order or directions to the respondents to grant arrear of disability element of disability pension @100% for two years from date of discharge i.3. 20.09.1986 to 19.09.1988 along with 12% interest on arrear.*
- (c) To issue pass an order or directions to the respondents to constitute the fresh Medical Board to assess the present medical condition of applicant and if any disability percentage occurs then accordingly grant disability element of disability pension monthly in light of Hon’ble Apex Court judgments and Government of India, MoD letter dated 31.01.2001 in the interest of justice.*
- (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 OA. 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 OA.*
- (e) To allow this original application with costs.”*

2. Briefly stated, applicant was enrolled in Corps of Signals of Indian Army on 25.02.1981 and was invalided out from service on 10.01.1997 in Low Medical Category EEE (Psy) under Rule 13(3) Item III (iii) of the Army Rules, 1954. At the time of invalidment from service, the Invaliding Medical Board (IMB) held at Military Hospital on 06.12.1996 assessed his disability ‘**NEUROSIS-300**’ @30% for

two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability element was rejected vide letter dated 19.08.1997. The applicant preferred Petitions which too were rejected vide letters dated 03.04.2003, 06.02.2013 and 10.12.2018. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**NEUROSIS-300**' has been regarded as 30% for two years by IMB. However, since the disability was opined by IMB to be neither attributable to nor

aggravated by military service his claim for grant of disability element of disability pension was not granted. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability element, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. 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)].*
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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, we find that the Invaliding Medical Board has denied attributability to the applicant only by endorsing that the disability '**NEUROSIS-300**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service being constitutional in nature. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Invaliding Medical Board for denying disability element to applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was

enrolled in Indian Army on 25.02.1981 and the disability has started after more than 14 years of Army service i.e. on 15.12.1995. We are therefore of the considered opinion that the reasons given in IMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability element of disability pension for two years from the date of his discharge.

8. Since the applicant's IMB was valid for two years w.e.f. 10.01.1997, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element of disability pension.

9. In view of the above, the **Original Application No. 239 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders dated 19.08.1997, 03.04.2003, 06.02.2013 and 10.12.2018, rejecting the claim of the applicant, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @30% for two years which would be rounded off to 50% for two years from the date of his discharge. The respondents are directed to grant disability element to the applicant @30% for two years which would stand

rounded off to 50% for two years from the date of discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 19 July, 2021

AKD/-