

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 30 of 2021**Tuesday, this the 20th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex Sepoy Abhinash Chander
S/o Late Santu
R/o Village – Ashapur, Post – Darshan Nagar,
Tehsil – Sadar, PS – Kotwali Ayodhya,
Dist – Faizabad (UP) PIN-224001

..... Applicant

Ld. Counsel for the Applicant : Wg Cdr S.N. Dwivedi (Retd), Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-charge Records, Army Medical corps Records Lucknow.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
Central Govt Counsel.**ORDER**

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

“(a) Issue/pass an order or direction of appropriate nature to the respondents to allow him to draw in continuation from 16.06.1971 deserved and entitled disability element to the extent of 20% as recommended by the Release Medical Board

which is to be rounded off to 50% as per the Govt. of India letter no 1(2)/97/D(Pen-C) dated 31.01.2001 (Annexure No. A-7) and pensionary benefits as recommended by the Release Medical Board and to the applicant Ex-Sepoy Abhinash Chander.

(b) Issue/pass an order or direction of appropriate nature to the respondents to issue revised PPO and pay appropriate compensation because of the recurring loss of the entitled pension to the applicant due to non-adherence of the relevant provisions on the subject.

(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 cost.”

2. Briefly stated facts of the case are that applicant was enrolled in the Army on 09.10.1964 and was discharged from service on 16.06.1970 in low medical category under Army Rule 13 (3) III (v) after rendering 5 years, 8 months and 8 days of service. The Release Medical Board (RMB) assessed his disability “**PERIPHERAL VASCULAR DISEASE LEFT FOOT**” @ 20% for one year and considered it as neither attributable to nor aggravate by military service. His claim for grant of disability pension was rejected by PCDA (P) Allahabad vide order dated 20.08.1970. Thereafter, the applicant filed O.A. No. 633 of 2017 before this Tribunal which was allowed vide order dated 18.01.2019 directing the respondents to grant disability pension for one year as assessed by RMB and conduct a Re-Survey Medical Board for the applicant for further entitlement of disability pension. Accordingly, RSMB was conducted at Command Hospital, Lucknow which was approved on 30.07.2019 and assessed disability of the applicant @ 20% for life (net

assessment NIL for life) and considered it as NANA. Disability pension claim of the applicant was again rejected by PCDA (P) Allahabad treating disability percentage as NIL for life. Being aggrieved, the applicant has preferred the present O.A. for grant of disability pension.

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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service, hence, it is attributable to and aggravated by Military Service. He further submitted that on the directions of this Tribunal, RSMB has been conducted and applicant's disability has been assessed @ 20% for life, hence, applicant should be granted disability pension in view of various judgments passed by the Hon'ble Apex Court in Civil Appeal No. 4949/2013 ***Dharamvir Singh v. Union of India***, decided on 02.07.2013, Civil Appeal No. 5922 of 2012, ***Veer Pal Singh vs. Secretary Ministry of Defence***, decided on 02.07.2013 and Civil Appeal No. 5605 of 2011, ***Sukhvinder Singh vs Union of India***, decided on 25.06.2014, Para 173 of Pension Regulations for the Army, 1961 (Part-1) and Rule 5, 9 14(b) and 20 of Entitlement Rules for Casualty Pensionary Awards, 1982.

4. On the other hand, Ld. Counsel for the respondents raised objection stating that applicant has approached this Tribunal again for verbatim same relief and for same cause of action. He further submitted that disability of the applicant has again been assessed @

20% for life as NANA and net assessment NIL for life due to smoking and no causable relationship to service established. Therefore, applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RSMB 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. With regard to objection raised during course of hearing by learned counsel for the respondents under Section 11 of Cr.P.C., the Court is of the view that applicant has approached this Tribunal not for the same cause of action and relief but it is a relief which has been granted to the applicant by RSMB, assessing his disability @ 20% for life and, therefore, respondents could have granted disability element to the applicant on the point of attributability which has already been held by this Tribunal in his earlier O.A. granting him disability element, hence, a subsequent O.A. for follow up relief is not barred by the principles of *res adjudicata*.

7. 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 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)]. [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)."

8. In view of the settled position of law on attributability/aggravation, The disability of the applicant has already been held attributable to military service by this Tribunal vide order dated 18.01.2019 and accordingly, applicant was granted disability element @ 20% for one year, hence, denial of disability element for the same disease and percentage for the reason of attributability is now not sustainable. Therefore, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court

judgment of **Dharamvir Singh** (supra) and his disability is considered as aggravated by military service.

9. In view of the above, applicant is held entitled to 20% disability element for life from the date of approval of RSMB proceedings i.e. 30.07.2019. The applicant will also be eligible for the benefit of rounding off of disability element from 20% to 50% for life in terms of the decision of Hon'ble Supreme Court in **Union of India and others v. Ram Avtar** (Civil Appeal No 418 of 2012 dated 10.12.2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order passed by the respondents is set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 20% for life duly rounded off to 50% for life from the date of approval of RSMB proceedings i.e. 30.07.2019. The respondents are directed to grant disability element @ 50% for life from the date of approval of RSMB proceedings i.e. 30.07.2019. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

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

Dated: July, 2021

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