

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 53 of 2019

Thursday, this the 4th day of July, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

JC-635299N Nb Sub Dinesh Kumar Rai (Retd), Son of Ex. Naik (TS) Dhurba Kumar Rai, Resident of Village – 59 Bilaspur, Kandligaon, P.O. Ghan Gorha Cantt, Tehsil – Dehradun, District – Dehradun (Uttara Khand) PIN – 248003.

....Applicant

Ld. Counsel for the applicant: **Col Rakesh Johri (Retd)**, Advocate

Versus

1. Union of India through The Secretary, Ministry of Defence, New Delhi - 110001.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi – 110001.
3. Additional Director General Personnel Services, Adjutant General's Branch, Integrated Headquarters of the Ministry of Defence, Room No- 11, Plot No – 108 (West), Brassey Avenue, Church Road, New Delhi - 110001.
4. Officer in Charge, Records 11 GORKHA RIFLES, PIN – 900450, C/O 56 APO.
5. Principal Controller General Defence Accounts Pensions, Draupadi Ghat, Allahabad – 211014.

.....Respondents

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

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

- “ (a) *To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in Records 11 Gorkha Rifles letter No. JC-635299N/Pen-2 dated 26.07.2017 (Annexure A-1).*
- (b) *To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of first appeal preferred by the applicant against denial of the disability pension as contained in The Appellate Committee on First Appeals letter No. B/40502/2017/AG/PS-4(Imp-II) dated 21.02.2018 (Annexure A-2).*
- (c) *To issue/ pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of the second appeal preferred by the applicant as conveyed by Second Appellate Committee vide Army Headquarters, Additional Directorate General of Personnel Services, Adjutant General Branch letter No B/38046A/183/2018/AG/PS-4(2nd Appeal) dated 09.10.2018 (Annexure A-3).*
- (d) *Issue/pass an order or direction to the respondents to grant him 30% disability pension as assessed by the Medical Board along with benefit of rounding off to 50% being his constitutional right.*
- (e) *Issue/pass any other order or direction as this Honourable Tribunal may deem fit in the circumstances of the case.*
- (f) *Allow this application with cost.”*

2. The undisputed factual matrix on record is that the applicant joined the Army on 28.04.1993 and was discharged from service on 30.06.2017 in Low Medical Category. The Release Medical Board (RMB) assessed his disabilities “**(i) PRIMARY HYPERTENSION (I-10) @ 30%** and **(ii) OBESITY (E-66) @ 1-5%** for life. His composite disability was assessed @ 30% by RMB. His disability was however opined as neither attributable to nor aggravated by Military Service (NANA) by the RMB. His claim for grant of disability pension was rejected by respondents vide letter dated 26.07.2017. He preferred First and Second Appeal against the rejection of disability claim which were also rejected by the respondents vide orders dated 21.02.2018 and 09.10.2018 accordingly. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of present O.A.

3. Learned counsel for the applicant pleaded that since the applicant was enrolled in a medically fit condition and was discharged in low medical category and there is no note in the service documents that he was suffering from any disease at the time of entry into service, his disability should be considered as attributable to and aggravated by Military Service and the applicant should be granted disability pension.

4. On the other hand, learned counsel for the respondents submitted that the Medical Board considered the disability of

the applicant @ 30% for life as NANA. Paragraph 173 of Pension Regulations 1961 (Part-1) clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above. Since his disability was considered as neither attributable to nor aggravated by military service (NANA), hence his claim for grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The proposition of law with regard to attributability has already been settled by the Hon'ble Supreme Court and is no more *res integra*. On careful perusal of RMB, we find that the only reason for declaring the disability of the applicant as NANA was that it originated in a peace area and not in a field area. We do not find this explanation to be logical and satisfactory for denying attributability of the disease to Military Service. It is clear that the applicant had served in a Field and High Altitude Area at Kargil from 10.06.2013 to 18.05.2015, thereafter he moved to Dharamshala in Himachal Pradesh as a member of Advance Party. We have noted that he was in SHAPE 1 and for the first time he was placed in Low Medical Category on

22.08.2015 i.e. within three months after movement out from High Altitude Area of Kargil. Thus considering all issues and specially the fact that the applicant has been detected with disabilities within three months of movement out from a Field and High Altitude location, we are of the considered opinion that his first disability "Primary Hypertension (I-10)" is to be considered as aggravated by Military Service in terms of the law settled by Hon'ble Supreme Court in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316. Though learned counsel for the applicant has vehemently pleaded that in Field Area the individual has to eat whatever food is provided to him by his mess, however as far as the second disability i.e. "**OBESITY (E-66)**" is concerned we agree with the opinion of RMB and consider it as NANA. Thus considering all issues, we are of the opinion that the first disability of the applicant i.e. "**PRIMARY HYPERTENSION**" is to be considered as aggravated by Military Service.

7. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar, Sukhvinder Singh vs. Union of India & Ors.***, reported in (2014) STPL (WEB) 468 SC and ***Union of India vs. Ram Avtar***

& Others, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

8. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The impugned orders passed by the respondents rejecting the claim for grant of disability pension are set aside. The first disability of the applicant i.e. **“PRIMARY HYPERTENSION”** @ 30% for life is to be considered as aggravated by Military Service. The respondents are directed to grant disability element to the applicant from his date of discharge i.e. 01.07.2017 @ 30% for life which shall be rounded off to 50% for life. The applicant is however already in receipt of service element. This exercise shall be completed within a period of four months from today, failing which the respondents shall have to pay interest at the rate of 9% per annum on the total amount, from the date it becomes due till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Date: July, 2019
Ukt/-

(Justice S.V.S. Rathore)
Member (J)