

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 148 of 2018

Thursday, this the 4th day of July, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Raj Kumar Verma (No. 15567312-X Ex. Spr) Son of Shri Vishram Verma, R/o Village : Pure Kurmi Ka Purma, Post – Barnaw, District : Raibareli (U.P.).

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ, Post Office New Delhi-11.
3. The Officer In-Charge Record Office, Bombay Engineer Group, PIN-900796, C/o 56 APO.
4. The Chief Controller of Defence Accounts, Draupadi ghat, Allahabad-14 (U.P.).

.....**Respondents**

Ld. Counsel for the : **Shri V.P.S. Vats**,
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

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

- (i) *Hon’ble Tribunal may be pleased to set aside the finding of the Review Medical Board which assessed the disabilities of the applicant as neither attributable nor aggravated by military service and further assessed percentage of disabilities as 40% for life but Nil for disability pension (Annexure No A-1) and Order dated 19/01/2018 (Annexure No a-2).*
- (ii) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 22/01/2006 for life alongwith the interest at the rate of 18% per annum.*
- (iii) *Hon’ble Tribunal may be pleased further to grant benefit of rounding off disability pension @50 Percentage in terms of Ram Avtar’s case.*
- (iv) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated facts of the case are that the applicant was enrolled in Bombay Engineer Group in the Indian Army on 07.03.2001 and was invalided out from service on 21.02.2006 in Low Medical Category “S5H1A1P1E1 under Rule 13(3) III (iii) of the Army Rules, 1954. At the time of invalidment from service, the Invaliding Medical Board (IMB) held on 25.01.2006 assessed his

disabilities (i) 'MILD DEPRESSIVE EPISODE' @ 15-19% for life and (ii) 'DYSTHYMIA' @10-14% for life, with composite disability @30% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but of no avail. Hence, the applicant had preferred Original Application No. 287 of 2011 before this Tribunal. Although, the said Original Application was dismissed vide order dated 21.02.2013, however, the respondents were directed to carryout Review Medical Board (RSMB) of the applicant and assess his disability, as a fresh case. In compliance of Order dated 21.02.2013 passed by this Tribunal in Original Application No. 287 of 2011 the Review Medical Board (RSMB) held at Base Hospital, Delhi Cantonment on 10.07.2013 assessed his disabilities (i) 'MILD DEPRESSIVE EPISODE' (ii) 'DYSTHYMIA', with composite disabilities @40% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. 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 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 applicant has successfully completed his training period. The diseases of the applicant were subsequently 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, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @40% for life has been regarded as NANA by the RSMB, hence applicant is not entitled to disability pension. 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 Review Medical Board proceedings as well as the records. The questions which needs to be answered are of two fold :-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension?

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)]. [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. We have noted that this Tribunal vide its order dated 21.02.2013 could not take a final call on attributability/aggravation of the applicant's disabilities and referred the same for a Review Medical Board (RSMB). However, now the law on attributability has been well settled by the Hon'ble Apex Court through a spate of Judgments i.e. ***Dharamvir Singh Versus Union of India & Others (Supra), Sukhvinder Singh Vs. Union of India & Others***, reported in (2014) STPL (WEB) 468 SC and ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). Thus in light of the well settled law on attributability, we find that the IMB and RSMB have denied attributability to the applicant by endorsing that the disabilities are NANA only on the ground that the onset of both the disabilities are in peace area and that there is no close time association with stress and strain of field/CI Ops/HAA service posting. This reasoning of Review Medical Board is not convincing and doesn't reflect the complete truth on this matter. Peace Stations have their own pressures of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 07.03.2001 and the disability 'MILD DEPRESSIVE

EPISODE' has started after more than two years i.e. in the year 2003 of Army service and disability 'DYSTHYMIA' has started after more than four years i.e. in the year 2005 of Army service. We have noted that 'DYSTHAMIA' is a continuous long term chronic form of depression. The fact that the RSMB has increased the composite disability percentage of applicant from 30% to 40% in 2013, confirms the progressive nature of this disease. We have also noted that one of the triggers of this disease is 'High Level Stress' and the possibility of a high level stress due to military service cannot be ruled out in this case. Hence, we are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and both the disabilities of the applicant @40% for life is to be considered as aggravated by military service.

8. The law on the point of rounding off of disability pension for a soldier who has been invalided out has already been well settled by the Government of India, Ministry of Defence, New Delhi letter No.1(2)/97/1/D(Pen-C) dated 31.01.2001. Hence, we are of the opinion that the applicant is entitled to rounding off of disability element from 40% to 50% for life.

9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv**

Dass vs. Union of India, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

10. Since the applicant has approached this Tribunal after a long delay after his RSMB i.e. 05 years after his RSMB, therefore, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the opinion that grant of disability pension along with the benefit of rounding off of disability element @ 40% for life to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

11. In view of the above, the **Original Application No. 148 of 2018** deserves to be partly allowed, hence **partly allowed**. The disabilities of the applicant i.e. (i) 'MILD DEPRESSIVE EPISODE' (ii) 'DYSTHYMIA', @ the composite disability 40% for life is to be considered as aggravated by military service. The respondents are directed to grant disability pension to the applicant with disability element @40% rounded off to 50% for life w.e.f. three years preceding the date of filing this Original Application. The date of

filing this Original Application is 05.03.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated: July, 2019
AKD/-