

Reserved
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 208 of 2018

Thursday, this the 28th day of March, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

IC 40049Y Col (Retd) Arun Prakash Pandey, Son of late Pram Chandra Pandey, Village- Khajuha, Post & Tehsil- Rudrapur, District- Deoria (UP).

.....Applicant

Ld. Counsel for : **Shri Rohit Kumar, Advocate**
the Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Second Appellate Committee on Pension (SACP), Additional Director General of Personal Services 4 (Imp-II), Adjutant Generals Branch, Integrated Headquarters of Ministry of Defence (Army), Room No.11, Plot No.108 (West), Brassey Avenue, Church Road, New Delhi-110011
3. Adjutant Generals Branch AGPS 4, Integrated Headquarters of Ministry of Defence (Army), New Delhi-110011
4. Principal Controller Defence Accounts, Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Anurag Mishra, Advocate**
Respondents

ORDER**“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”**

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

“(a) To quash the rejection order of the Second Appellate Committee on Pensions rejecting the second appeal of the applicant bearing no. B/38046A/304/2014/AG/PS-4 (2nd Appeal) dated 08 Jun 2017 (received by the applicant in the month Jul 2017) with all the consequential benefits to applicant.

(b) To quash the rejection order of the first Appellate Committee on Pensions rejecting the first appeal of the applicant bearing no. 13002/IC-40049/A-2/ARTY/MP-6(B)/55/2013/Appeal/AG/PS-4(Imp-II) dated 27 May 2014 with all the consequential benefits to applicant.

(c) To quash the rejection order of the Additional Directorate General Personal Services New Delhi rejection order, rejecting the claim of the applicant bearing no. 13002/IC-40049Y/A-2/Arty/MP-6(B)/438/2012/AG/PS-4(Imp-II) dated 18 Feb 2013 with all the consequential benefits to applicant.

(d) To grant the benefits of the rounding off as catered for in the Government of India Ministry of Defence New Delhi policy letter no. No. 1(2)/97/I/D(Pen-C) dated 31 Jan 2001 with all the consequential benefits to the applicant.

(e) To issue any other order or direction considered expedient and in the interest of justice and equity.

(f) Award cost of the petition.”

2. The brief facts of the case as borne out from the pleadings of the parties are that the applicant was commissioned in the Indian Army on 19.12.1981 (PC) and the applicant was earmarked to the Regiment of Artillery. Applicant got promotion up to the rank of Colonel and was discharged from service with effect from 30.04.2008 on attaining the age of superannuation. Since the applicant was in low medical

category he was brought before duly constituted Release Medical Board (RMB), which found him suffering from “**INFERO POSTERIOR WALL MYOCADIAL INFARCTION**”. The RMB assessed his disability @ 30% for life but opined that the disability is neither attributable to nor aggravated by military service (NANA). The case for disability pension was rejected by the Additional Directorate General Personnel Services New Delhi vide letter dated 18.02.2013. The applicant preferred first appeal which was also rejected vide letter dated 27.05.2014 by First Appellate Committee on Pensions on the same ground of NANA. The applicant preferred second appeal against the said order of rejection on 08.06.2017, which was also rejected vide order dated 31.07.2017 Second Appellate Committee on Pensions. Hence feeling aggrieved the applicant has preferred the present O.A.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter he has been discharged in Low Medical Category from army service, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

4. The respondents have filed counter affidavit in this case denying the claim of the applicant. While rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the applicant was discharged from service on 30.04.2008 on attaining the age of superannuation. Before discharge from service the Release Medical Board held of the applicant found him suffering from “**INFERO POSTERIOR WALL MYOCADIAL INFARCTION**” @ 30% but the same was opined by RMB to be neither attributable to nor aggravated by military service and as such, he has rightly been denied disability pension by the authorities concerned. He has also submitted that Para 173 of the Pension Regulations clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is

attributable to or aggravated by military service and is assessed at 20% or more. He concluded by stating that this being a NANA case as per the opinion of RMB, hence the claim of applicant for disability pension has rightly been rejected.

5. We have heard Shri Rohit Kumar, Ld. Counsel for the applicant and Shri Anurag Mishra, Ld. Counsel for the respondents and perused the record. The only question before us is as to whether the disability of the applicant is attributable to or aggravated by military service ?

6. On careful perusal of the RMB we find that the reason given for disability i.e. **“INFERO POSTERIOR WALL MYOCADIAL INFARCTION”** @ 30% for life is very cryptic and lacks clarity. The RMB has opined that because the disease has originated in peace area and not in Field/ High Altitude Area/ Counter Insurgency Operation Area hence it is NANA. This amounts to saying that there is no stress and strain of military service in peace stations. We all know that militaries all over the world believe in **“THE MORE YOU SWEAT IN PEACE, THE LESS YOU BLEED IN WAR.”** Hence military personnel at peace stations have their own share of intense training and work related stress and strains. Thus considering all issues we are inclined to give the benefit of doubt to the applicant. Therefore, in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264 we are of the considered opinion that the disability of the applicant i.e. **“INFERO POSTERIOR WALL MYOCADIAL INFARCTION”** is 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. It is well settled that the claim for pension is based on continuing wrong and the 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 the law settled by the Hon'ble Apex Court is that if a petition for pension, disability pension in this case, is filed beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

9. In view of the above the Original Application deserves to be partly allowed. Accordingly the O.A. is **partly allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability element to the applicant @ 30% for life which would stand rounded off to 50% for life w.e.f. three years prior to filing this petition. The date of filing this petition is 21.02.2018. The respondents are further 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: March , 2019

JPT

(Justice SVS Rathore)
Member (J)