

Reserved Judgment
Court No. 1

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

O. A. No. 22 of 2019

Friday, this the 29th day of March, 2019.

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

No. 111896K POA (PH) Deep Kumar Babelay (IN) (Retd),
Son of late Prem Shankar Baelay, Village- Pachokhara, Post
Office- Ait, District- Jalaun, U.P., PIN- 285201

.....Applicant

Ld. Counsel for : **Col (Retd) YR Sharma, Advocate**
the Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Chief of the Naval Staff, Integral HQ, MoD (Navy), Naval
Headquarters, New Delhi- 110011
3. Controller of Defence Account (Navy), Bombay- 400 088
4. Officer-in-Charge, Naval Pension Office, C/O INS
Tanaji, Sion Trombay Road, Mankhurd, Mumbai-400088
5. Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai-
400 088

.....Respondents

Ld. Counsel for the: **Shri R.C. Shukla, 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) Set aside the Release Medical Board proceeding held from 30 May 1997 recommended and approved on 14 Nov 1997 to the extent that disability is neither attributable to Naval service nor connected with Naval service. Copy of the impugned order is at Annexure A-1.

(b) Set aside the copy of Bureau of Sailors, Cheetah Camp, Mankhurd Mumbai letter dated 09.07.1999, rejecting the claim of Disability Pension on the ground that Disability (i) is not attributable to Naval service and (ii) does not fulfil the following conditions, namely that it existed before or arose during Naval service and has to be and remain aggravated hereby. The impugned order is at Annexure A-2.

(a) Set aside Naval Pension Office C/O INS Tanaji, Sion Trombay Road, Mankhurd Mumbai letter dated 07 March 2017, rejecting the appeal of Disability Pension and rounding off of disability pension. Copy of the impugned order is at Annexure A-3.

(b) Direct Respondents to grant 20% disability element of pension for two years, to be rounded off to 50% for disability (i) ALLERGIC RHEINITIS and (ii) SENSORY NEURAL HEARING LOSS to the applicant from the date of retirement.

(c) Direct the Respondents to hold the Re Assessment Medical Board to decide the future disability and percentage for life in the nearest Military Hospital.

(d) Allow this Original Application with costs.

(e) Issue/Pass an order or direction as the Honourable Tribunal may deem fit in the circumstances of the case.”

2. As per Office report there was delay in filing this petition but the same has been condoned by this Tribunal vide order dated 11.01.2019.

3. The brief facts of the case as borne out from the pleadings are that the applicant was enrolled in the Indian Navy on 10.01.1983 in medically fit condition and was discharged from service on 31.01.1998 after serving for 15 years and 21 days in medical category S3A2. While on the posted strength of INS Angre, in 1997 his disability “(i) ALLERGIC RHEINITIS and (ii) SENSORY NEURAL HEARING LOSS” was detected. The Release Medical Board (RMB) held before discharge of the applicant considered both the disabilities of the applicant i.e. “(i) ALLERGIC RHEINITIS and (ii) SENSORY NEURAL HEARING LOSS” as aggravated by Naval service and assessed it as 20% for two years. However contrary to the opinion of RMB the claim of the applicant for grant of disability pension was rejected vide letter dated 09.07.1999 and the disabilities were adjudicated as NANA by a higher formation in the chain of command, as informed by Bureau of Sailors Mumbai. Applicant preferred an appeal against rejection of his claim on 27.07.2016 and also for its broad banding but the same was also rejected vide letter dated 07.03.2017 on same ground, hence the present O.A.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and his both disabilities have been considered as aggravated due to Naval service by RMB, therefore the action of respondents in overruling the recommendations of RMB and denial of disability pension without a second medical examination of the applicant, should be set aside in light of clear rulings on this matter by Hon’ble Apex Court. He pleaded that applicant should be granted disability pension.

5. The respondents have not filed any counter affidavit in this case. While rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the applicant was discharged from service in low medical

category for “(i) ALLERGIC RHEINITIS and (ii) SENSORY NEURAL HEARING LOSS” which was considered by RMB as aggravated by Naval service but the same was over ruled by competent authority hence the disabilities are not attributable to or aggravated by Naval service and as such, he has rightly been denied disability pension. He concluded by stating that the competent authority has over ruled the opinion of RMB and held his disability as NANA. As such the applicant is not entitled to disability pension.

6. We have heard Col (Retd) Y.R. Sharma, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents and perused the record. The only question to be considered in this case is as to whether the disabilities of the applicant is attributable to or aggravated by Naval service or not ?

7. The importance of opinion of a medical board is no more RES INTEGRA. The supremacy of Release Medical Board which has physically examined the individual has been clearly established vide Hon’ble Apex Court judgment in Civil Appeal No. 164/ 1991 **Union of India in Ex. Sapper Mohinder Singh vs. Union of India**. The observation made in the decision of **Ex.Sapper Mohinder Singh** (supra) being relevant is quoted below:

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be

constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

Thus in light of the law settled by Hon'ble Apex Court we agree with findings of RMB and declare both the disabilities of the applicant as aggravated by Naval service.

8. 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).

9. 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.

10. Since the medical board has assessed the disability of the applicant as 20% for two years, as such, keeping in view the judgment of ***Veer Pal Singh vs. Ministry of Defence & ors***, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess further entitlement to disability element, if any.

11. In view of what has been stated above the O.A. deserves to be partly allowed and is hereby **partly allowed**. The impugned orders passed by the respondents are set aside. The applicant is entitled to disability pension @ 20% for two years to

be rounded off to 50% from the date of his discharge. However, due to law of limitation he is not entitled for arrears of disability element for the two years after discharge. He is already in receipt of service element since his discharge. The respondents are required to refer the applicant's case to Re-survey Medical Board for deciding further entitlement of his disability element. The respondents are also 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: 29th March, 2019

JPT

(Justice SVS Rathore)
Member (J)