

**Reserved  
Court No.1**

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

**Original Application No. 230 of 2018**

Tuesday, this the 26<sup>th</sup> day of March, 2019

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

Ex- MWO (HFO) Shive Govind Singh, S/o Shri Surat Singh,  
Resident of Plot No. 44, Greater Kailash, PO- Jajmau, Kanpur  
(U.P.) Pin- 208010.

.....Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence,  
New Delhi.
2. The Chief of the Air Staff, Air Headquarters, Vayu  
Bhawan, New Delhi- 110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi-  
110010.
4. Office of Joint CDA (Air Force), New Delhi C/o Air Force  
Central Accounts Office, Subroto Park, New Delhi –  
110010.
5. Principal Controller Defence Accounts (Pension),  
Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey, 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:-

“(I) To issue/pass an order or directions to set-aside the order dated 03.07.2015 and 16.02.2018 passed by respondents regarding Grant of Disability Element of disability pension in light of Hon’ble Apex Court Judgments and Government letter dated 31.01.2001.

(II) To issue/pass an order or directions to the respondents to Grant disability element of Pension to the applicant and rounding off the disability pension from 30% to 50% from the date of discharge i.e. 29.02.2016.

(III) To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(IV) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”

2. The brief facts of the case as borne out from the pleadings of the parties are that the applicant was enrolled in the Indian Air Force on 28.02.1978 and was discharged from service with effect from 29.02.2016 on attaining the age of superannuation after rendering total 38 years of regular service. Before discharge from service the Release Medical Board (RMB) held of the applicant found him suffering from (i) ‘**PRIMARY HYPERTENTION**’@ 30% and (ii) Dyslipidemia @ 30% but opined that both the disabilities are neither attributable to nor aggravated by military service (NANA) and assessed the disability on account of both the diseases as 30% compositely for life. The case for disability pension was rejected by the respondents vide letter dated 30.07.2015 on the ground of NANA. The applicant preferred first appeal against the said order of rejection on 05.02.2016 for grant of disability pension but the same was also rejected vide order dated 16.02.2018. 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 29.02.2016 on attaining the age of superannuation after rendering total 38 years of regular service. Before discharge from service the Release Medical Board held of the applicant found him suffering from (i) '**PRIMARY HYPERTENTION**'@ 30% and (ii) Dyslipidemia @ 30% but the same were found 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 Pankaj Kumar Shukla, Ld. Counsel for the applicant and Shri Rajiv Pandey, 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 first disability i.e. "Primary Hyper tension" @ 30% for life being NANA 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 first disability of the applicant i.e. “Primary Hyper tension”(OLD) I 10.0” 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 for his disability '**PRIMARY HYPERTENTION**' @ 30% for life which would stand rounded off to 50% for life from the date of his discharge i.e. 01.03.2016. 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 26, 2019

JPT

**(Justice SVS Rathore)**  
**Member (J)**