

(Reserved Judgment)
Court No.1

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

Original Application No. 494 of 2018

Tuesday, this the 26th day of March, 2019

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

Ex Sub Shobh Nath Mishra (JC 404686X), S/o Sri Bhanu Pratap Mishra, Mau Shivala Road, Gaddopur Majhhawa, Post Gaddopur, Faizabad- Pin- 224001

.....Applicant

Ld. Counsel for : **Col (Retd) A.K. Srivastava, Advocate**
the Applicant

Versus

1. The Secretary, Govt of India (MoD), South Block, DHQ P.O. New Delhi - 110001
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ P.O. New Delhi - 110001
3. The Addl Dte Gen of Personnel Services, Adjutant General's Branch/PS-3, IHQ of MoD (Army), Sena Bhawan, DHQ P.O. New Delhi- 110001
4. OIC Records, Records Brigade of the GUARDS, Kamptee (Maharashtra)- 441001

.....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) Issue/ Pass an order or direction of appropriate nature to quash/set aside respondent's impugned orders

passed by the respondents vide Records the Brigade of GUARDS letter dated 06/07/2018 (Annexure No.1) and 07/08/2018 (Annexure No.2) denying entitled 30% disability element of pension due to disability of his 30% disability of Primary Hypertension which led to further denial of 50% disability element pension.

(b) Issue/ Pass an order or direction of appropriate nature to the respondents to set aside the opinion/remarks on page 4 and 5 of the RMB proceedings (Annexure No.3) that applicant's said 30% disability due to Primary Hypertension was neither attributable to nor aggravated by military service.

(c) Issue/ Pass an order or direction of appropriate nature to the respondents to consider applicant's said 30% disability due to Primary Hypertension as attributable to or aggravated by military service in a modified field area and accordingly sanction 30% war injury disability element pension duly rounded off to 50% w.e.f. 01 May 2018.

(d) Issue/ Pass an order or direction of appropriate nature to the respondents to grant 30% war injury disability element pension duly rounded off to 50% w.e.f. 01 May 2018.

(e) Issue/ Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(f) Allow this application with costs."

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 Army on 21.04.1988 and was discharged from service with effect from 30.04.2018 on completion of term of engagement. Before discharge from service the Release

Medical Board (RMB) held of the applicant found him suffering from “**PRIMARY HYPERTENTION ICD 1.10**”@ 30% but opined that the disability is neither attributable to nor aggravated by military service (NANA) and assessed the disability on account of this diseases as 30% for life. The case for disability pension was rejected by the competent authority i.e. Officer-in-Charge, Records, Brigade of the Guards vide order dated 06.07.2018 on the ground of NANA. The applicant preferred first appeal against the said order of rejection on 07.07.2018 but the same was rejected and communicated to him vide letter dated 07.08.2018. 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 30.04.2018 on completion of his term of engagement. Before discharge from service the Release Medical Board held of the applicant found him suffering from “**PRIMARY HYPERTENTION ICD 1.10**” @ 30% but the same was 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 Col (Retd) A.K.Srivastava, Ld. Counsel for the applicant and Shri R.C.Shukla, 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 denial of attributability of disability "**PRIMARY HYPERTENTION ICD 1.10**" is very strange and cryptic i.e. "Neither attributable nor aggravated by military service, onset in January 2014 (3 months after leaving modified field area)." The RMB has opined that because the disease has originated after three months of leaving Modified Field 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. "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. In view of the above the Original Application deserves to be allowed. Accordingly the O.A. is **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 from the date of discharge of the applicant i.e. 01.05.2018. 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.

9. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: March 26, 2019

JPT

(Justice SVS Rathore)
Member (J)