

(Reserved Judgment)
Court No.1

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

Original Application No. 584 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)

No. 15464913-H Ex-Dfr Vivek Singh, of 65 Armoured Regiment, HQ Sqn ACCS and School, Ahmednagar, son of Shri Pratap Bahadur Singh, resident of Village- Bahuchara, Post Office- Bahuchara, Tehsil- Sadar, District- Pratapgarh (U.P.), Pincode- 230137.

.....Applicant

Ld. Counsel for : **Shri K.K.S. Bisht, Advocate**
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Armoured Corps Records, PIN- 900476, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)- 211014.

.....Respondents

Ld. Counsel for the : **Shri D.K. 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:-

“(a) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by Records, the respondent No.3 communicated vide letter No. 15464913H/DP/Pen dated 16 March 2013 {Annexure No.A-1(ii)} rejecting the disability pension claim of the applicant.

(b) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by Appellate Committee on First Appeals (ACFA) vide order No. B/40502/761/2016/AG/PS-4(Imp-II) dated 10 Nov 2017 {Annexure No.A-1(iv)} rejecting the disability pension claim of the applicant.

(c) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order dated 02 February 2018 passed by Records, the respondent No.3 {Annexure No.A-1(iv)} rejecting the disability pension claim of the applicant.

(d) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by Second Appellate Committee on First Appeals (SACP) vide letter No. B/38046A/218/2018/AG/PS-4(2nd Appeal) dated 26 October 2018 {Annexure No.A-1(iv)} rejecting the disability pension claim of the applicant.

(e) Issue/pass an order or direction of appropriate nature to the respondents to grant 30% “Disability Element” of disability pension which after rounding off will be 50% for life from the date of his discharge i.e. 31.01.2013 (AN) along with arrears of disability pension with interest at the rate of 18% per annum.

(f) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(g) Allow this application with costs.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 27.06.1994 in medically fit condition and was discharged from service with effect from 31.01.2013 under Army rule 13 (3) III (v) on completion of 18 years, 07 months and 04 days of service. The medical board held before discharge considered the disability for (a) **PRIMARY HYPERTENTION (T-10)** and (b) **SIMPLE OBESITY (E-66)** as neither attributable to nor aggravated by military service and assessed it as 30% for life. The case for disability pension was rejected by the respondent no.3 vide letter dated 16.03.2013 but by the same letter the applicant was advised to prefer an appeal to the appellate committee if he feels aggrieved. The applicant preferred appeal against the said order on 30.05.2016 but in spite of reminders when the same was not disposed of he filed O.A. No. Nil of 2017 alongwith M.A. No.1748 of 2017 for a direction to the respondents to decide the statutory first appeal of the applicant dated 30.05.2016, which was disposed of by this Tribunal vide order dated 20.12.2016 with the direction to the respondents to decide the statutory first appeal of the applicant dated 30.05.2016, if not already decided. Pursuant to the aforesaid order of the Tribunal the first appeal of the applicant was rejected vide order dated 10.11.2017 by the Appellate Committee on First Appeals considering the disabilities neither attributable to nor aggravated by military service. According to the applicant the aforesaid order dated 10.11.2017 was not communicated to the applicant and after several reminders he was intimated that by a speaking and reasoned order dated 02.02.2018 the order of the Tribunal dated 20.12.2017 has been fully complied with. The applicant also preferred second appeal against the order dated 10.11.2017 of the first appellate authority but the same was also rejected vide order dated 26.10.2018 on same ground.

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 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 (a) **PRIMARY HYPERTENTION (T-10)** and (b) **SIMPLE OBESITY (E-66)**, which was considered as neither attributable to nor aggravated by military service and as such, he has rightly been denied disability pension. Therefore the applicant is not entitled to disability pension in accordance with Para 173 of the Pension Regulations which 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. But subsequently the learned counsel acceded that in similar cases, various benches of Armed Forces Tribunal have granted disability pension and the case of the applicant is squarely covered by those judgments, hence he is entitled to grant of disability pension in terms of Para 173 of Pension Regulations.

5. We have heard Shri K.K.S. Bisht, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents and perused the record. The only issue which needs to be decided by us is as to whether the disability of the applicant is attributable to or aggravated by military service.

6. We have carefully perused the RMB and noticed that the applicant had two disabilities i.e. Primary Hyper tension and simple obesity. We have noted that the disability of obesity started 06 months after the origin of first disability i.e. Primary Hyper tension. We have also noted that RMB has opined the disability "Primary Hyper tension" to be NANA primarily because it had started in a peace station and not in a Field/High Altitude Area/Counter Insurgency Operation Areas. 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 i.e. Primary Hyper tension of applicant is aggravated by military service. We are not in agreement that stress and strain of military service is only in Field/ High Altitude Area/ Counter Insurgency Operation Areas. It is well known that militaries all over the world follow the dictum "The more you sweat in peace, the less you bleed in war." Hence peace tenures of military personnel are also very demanding and have their other stress and strains.

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). Hence we are of the opinion that the applicant is eligible for the benefit of rounding off.

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 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 three years prior to the filing of the present Original Application, i.e. 05.12.2018. 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)