

Reserved
Court No.1

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

Original Application No. 84 of 2019

Thursday, this the 28th day of March, 2019

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

Vijay Paul (No 13956398-H Ex Havildar) Son of Shri Bulaki Paul, resident of House No S-630, Sanskriti Enclave, Eldeco, Raebareli Road, Lucknow- 226025 (UP)

.....Applicant

Ld. Counsel for : **Shri R. Chandra, Advocate**
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi- 11.
3. The Officer-In-Charge, Army Medical Corps Records, Lucknow- 2260002 (UP)
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad -14 (UP)

.....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:-

“(I) The Hon’ble Tribunal may be pleased to set aside the orders dated 19/12/2017 (Annexure No A-1).

(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01/01/2008) along with its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.

(III) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

2. The brief facts of the case as stated by the applicant are that he was enrolled on 17.12.1983 in Army Medical Corps as Dental Operating Room Assistant in medically fit condition and was discharged from service on 31.12.2007 under Army rule 13 (3) III (i) on completion of his term of engagement. The Release Medical Board (RMB) held before discharge found him suffering from “**TYPE-II DIABETES MELLITUS**” but considered it as neither attributable to nor aggravated by military service and assessed it as 20% for life. According to the applicant he approached the respondents for grant of disability pension and also made appeal on 28.11.2017 for grant of disability pension. On 19.12.2017 respondent no.3 replied that the applicant was not entitled to disability pension. 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 “**TYPE-II DIABETES MELLITUS**”, which was considered as neither attributable to nor aggravated by military service. 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 R. Chandra, Ld. Counsel for the applicant and Shri Anurag Mishra, 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 proceeding, which was produced by the respondents during the course of hearing and noticed that the applicant was found suffering from the disability “**TYPE-II DIABETES MELLITUS**”. We have also noted that RMB has opined the disability “**TYPE-II DIABETES MELLITUS**”, to be NANA because it is not connected with service without assigning any specific reason. On perusal of RMB we find that the applicant was for the first time found to be suffering from the aforesaid disease on 15.07.2005 i.e. after completion of more than 22 years of service. Therefore the presumption may be drawn that the applicant was not suffering from any disease at the time of his enrolment till 22 years of service. Considering that the reason given by RMB for denying attributability is very cryptic i.e. “Not connected with service” we are of the considered opinion that benefit of doubt must go in favour of 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 i.e. **“TYPE-II DIABETES MELLITUS”** of applicant is aggravated by military.

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 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 @ 20% 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. 10.01.2018. 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)