

RESERVED
COURT NO.1

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

Original Application No.144 of 2018

Tuesday, this the 26th day of March, 2019

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

Hon'ble Hon'ble Air Marshal B.B.P. Sinha, Member (A)

IC-47317A Col Ravindra Kumar Pathak S/o Shri Kailash Pathak,
R/o H.No. 22-B Village Sarsawa PO Arjunganj,
District Lucknow U.P. 262002.

.....Applicant

Ld. Counsel for :
the Applicant

Shri S.G.Singh,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter of the Ministry
of Defence (Army), South Block, New Delhi 110011.
3. Additional Directorate General Personal Service Adjutant
General's Branch/PS-4 (Imp-II) Integrated Headquarter of the
Ministry of Defence (Army) Plot No.108 (West), Brassy
Avenue, Church Road, New Delhi 110011.
4. Deputy Director AG/PS-4 (2nd Appeal) for Adjutant General
IHQ of Ministry of Defence (Army) Room No.11, Plot
No.108 (West) Brassy Avenue, Church Road, New Delhi
110011.

.....Respondents

Ld. Counsel for the :
Respondents

Shri Amit Jaiswal,
Ld. Counsel for the Respondents.

ORDER

Delivered by 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 grant of disability pension. The applicant has made the following prayers:

“(a) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the impugned orders dated 16.12.2015, 17.02.2017 and 12.12.2017 whereby rejecting the claim of the applicant for disability pension annexed as Annexure no.-1 (i)(ii)(iii) respectively with the application.

(b) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.

(c) Allow the application with all consequential benefits with exemplary cost.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was commissioned in the Indian Army on 19th December 1987 in medically fit condition and was superannuated on 31.12.2015 on completion of more than 28 years of service. The Release Medical Board held before discharge opined that the disability PRIMARY HYPERTENSION as aggravated by military service and assessed it as 40% for Life. The opinion of RMB was overruled at a higher formation and the case for disability pension was rejected by the Additional Directorate General Personal Service, respondent no.3 without any subsequent physical examination of the applicant vide letter dated 16.12.2015. Thereafter his first appeal was rejected by the First Appellate Authority on 17.02.2017 and the second appeal was also rejected by the Second Appellate Authority vide order dated 12.12.2017.

3. Learned counsel for the applicant submitted that since the applicant was commissioned in medically fit condition thereafter he has superannuated in Low Medical Category. Additionally his disability has been conceded as aggravated by RMB, hence the applicant is eligible for disability pension.

4. We have noted that while filing counter affidavit, the respondents have not disputed that the applicant suffered disability to the extent of 40% for life, but submitted that the disability of “PRIMARY HYPERTENSION” was considered as aggravated by military service at appropriate level, as such, in terms of Para 173 of Pension Regulations, his claim has correctly been rejected.

5. We have heard the learned counsels for the parties and perused the records. We have specifically perused the RMB in great details and we find that the RMB has conceded the disability of the applicant as aggravated by Military service. The same has been overruled by higher formation without holding another Medical Board of the applicant. Thus, the question before us is straight and simple i.e. is the disability of the applicant attributable to or aggravated by Military Services.

6. We have also noted that the officer has been continuously representing his case and has also submitted First and Second Appeals against the rejection of his claim for disability pension. It appears that the respondents have overruled the opinion of RMB and declared his disability as NANA primarily on the ground that the disease has originated in peace area.

7. The law on overruling the opinion of RMB is no more *res integra*. The Hon’ble Supreme Court in the case of **Mohinder Singh vs. Union of India & others** (Civil Appeal No.164 of 1991) has clearly held that a higher formation in chain of command cannot overrule the opinion of RMB without physical medical examination of the patient through another Medical Board. In this case, no second Medical Board has been conducted.

8. Hence in the light of the above judgment, we set aside the letter of ADGPS dated 16.12.2015 and uphold the opinion of the RMB opining the disease to be aggravated by Military service.

9. 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).

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The disability of the applicant is held as aggravated by Military service. The respondents are directed to grant disability element to the applicant @ 40% for life which would stand rounded off to 50% w.e.f. the date of his superannuation i.e. 01.01.2016. 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.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: March, 2019

PKG