

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 709 OF 2017

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)

No.JC 842734K, Ex Nb/Sub Krishna Kumar,
S/o Ram Lot,
R/o Vill Ranipur P.O. Krondi,
District Sultanpur U.P.

.....Applicant

Ld. Counsel for :
the Applicant

Shri VP Pandey,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence,
New Delhi.
2. The Chief of Army Staff, Integrated Headquarters of Ministry of
Defence, South Block, New Delhi 110001.
3. The Office In-charge Records, Defence Security Cops Records, PIN
901277 C/o 56 APO.
4. Additional Director General Personnel Services AG's Branch/
PS-4 (Imp-II) Integrated Headquarter of MoD (Army) Plot No.108
(West), Brassey Avenue Church Road, New Delhi.
5. Principal Controller of Defence Accounts (P), Draupadi Ghat,
Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Dr SN Pandey,
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 with the following prayers :

“(I) To set aside/quash rejection of disability pension after summoning the copy of rejection of disability pension and rejection of Ist appeal dated 23.09.2015 (Anexure A-1).

(II) To issue order or direction to respondents to grant disability pension along to the applicant from the date of discharged from service.

(III) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(IV) Cost of the appeal be awarded to the applicant.”

2. The undisputed facts, as averred by the learned counsel for both the parties, are that the applicant was initially enrolled in the 103 Territorial Army on 30th July 1977 and was discharged from service from 05th January 1983 under T.A. Act Rule 16 of T.A. Regulations 1948 after rendering 03 years 11 months and 15 days of qualifying service. The applicant voluntarily re-enrolled himself in DSC on 12th January 1983 for an initial contractual terms of engagement of 10 years. His former service was counted towards DSC service as per the option exercised by him for the purpose of enhanced rate of pay and allowance, pension and gratuity. On completion of his initial terms of engagement, the applicant was granted extension of service from time to time and finally upto 11th January 2013. In the mean time, the applicant was placed in permanent Low Medical Category P2 w.e.f. 27th June 2012 for two years for the diagnosis **CAD-NSTEMI and A3 (T-24)** w.e.f. 21st August 2012 for the diagnosis **FRACTURE LATERAL END OF CLAVICLE (RT)**. The applicant was not granted further extension of service beyond 11th January 2013 due to his placement in permanent Low Medical Category. Ultimately the applicant was discharged from DSC

service w.e.f. 31st January 2013 under the provisions of Army Rule 13(3) item I (i) (a) after rendering 34 years and 05 days of qualifying service for which he was granted service pension for life. The applicant was brought before a duly constituted Release Medical Board which assessed his disability **CAD-NSTEMI POST PCI-LAD+RCA** as neither attributable to nor aggravated by Military service @30% for Life. However, the disability **FRACTURE LATERAL END OF CLAVICLE (RT)** has been assessed as attributable to Military Service by the RMB @20% for Life. The composite percentage of both the disabilities has been assessed as 40% for Life. The applicant has been granted 20% disability element for Life by the PCDA (P), Allahabad.

3. It appears that though the applicant was granted disability element for his second disability, he preferred First Appeal before the Appellate Committee on First Appeal against the rejection of disability element for the first disability i.e. **CAD-NSTEMI POST PCI-LAD+RCA**. The same was, however, rejected by the Appellate Committee on First Appeal on 26.08.2015.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has been discharged from service in Low Medical Category by medical board, which assessed his disability **CAD-NSTEMI POST PCI-LAD+RCA** as neither attributable to nor aggravated by Military service. However, the disability **FRACTURE LATERAL END OF CLAVICLE (RT)** has been assessed as attributable to Military Service by the Medical Board with 20% disability for Life. He pleaded for the disability **CAD-NSTEMI POST PCI-LAD+RCA** to be made attributable and disability element at the composite rate of 40%.

5. The respondents have submitted that the disability of the applicant due to the disease of disability **CAD-NSTEMI POST PCI-LAD+RCA** has been opined by the RMB as neither attributable to nor aggravated by Military service, as such, in terms of Para 173 of Pension Regulations, his

claim has correctly been rejected. However, the disability **FRACTURE LATERAL END OF CLAVICLE (RT)** has been assessed as attributable to Military Service by the Medical Board with 20% disability for Life. Therefore, the applicant has been correctly granted 20% disability element for Life.

6. We have heard both the learned counsel for the parties and perused the RMB in details. We find this case as unique because the applicant on one hand is benefitting from the decision of the RMB and getting disability element @ 20% for Life, however, on the other hand, he is challenging the RMB for rejecting his 1st disability i.e. **CAD-NSTEMI POST PCI-LAD+RCA @30%** for Life as NANA. We have also noted that the applicant is already in receipt of Service element after completing 34 years of service.

7. Considering all issues and specially the fact that the applicant is eligible for the benefit of rounding off i.e. 20% for Life to 50% for Life, we are of the considered opinion that no meaningful purpose has been served by filing this O.A. by the applicant. In any case, we are not inclined to interfere with the findings of the RMB, which has already accepted one disability of the applicant as attributable and the other one as NANA.

8. Considering the third prayer of the applicant, we are of the considered opinion that the benefit of rounding off can be extended to the applicant in the light of the law settled by the Hon'ble Apex Court judgment.

9. 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.

10. In view of the above the Original Application deserves to be partly allowed and hence the applicant is considered as eligible for the benefit of rounding off from 20% for Life to 50% for Life for last three years from the date of filing of this O.A.

11. Accordingly the O.A. is **partly allowed**. The respondents are directed to grant the benefit of rounding off of 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. The date of filing of O.A. is 26.09.2017. 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/SB