

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 222 of 2019

Thursday, this the 28th day of March, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Dinesh Shukla No. 14623541 Ex. Nk., Son of Sri Ramji Shukla,
R/o Village & Post Nikasi, Tahsil – Rasra, District – Ballia (U.P.),
Pin-221711.

..... Applicant

Ld. Counsel for the : **Shri Dwijendra Nath Pandey, .**
Applicant Advocate

Versus

1. The Union of India through its Secretary, Ministry of Defence, South Block, Sena Bhawan, New Delhi, C/O 56 APO.
2. Chief of Army Staff through its Officer-in-Charge/Chairman, Second Appellate Committee on Pension through Records, Ministry of Defence, Secunderabad C/o 56 APO.
3. Additional Director General of Personnel, Services/AG’s Branch, IHQ of Ministry of Defence (Army), PIN-900256, C/O 56 APO.
4. Senior Record Officer for O/C EME Records PIN-900453 C/O 56 APO.
5. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad, C/O 56 APO.

.....**Respondents**

Ld. Counsel for the : **Shri Asheesh Agnihotri,**
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(A) quash the first appellate order dated 31-05-2018 which contained as Annexure no. 11 to this O.A. being non-speaking, unjustified, bad and illegal to meet the ends of justice.*
- (B) direct the respondents to grant disability pensionary service benefits to the applicant with effect from due date on 31-10-2016 and pay him all its arrears along with compound interest at prevailing market rate from the date of its accrual to the dates of actual payment to the applicant in the interest of justice.*
- (C) Pass such any other order or directions etc. which are just proper and appropriate in the facts and circumstances of the case in favour of the applicant and against the respondents to meet the ends of justice.*
- (D) Allow this O.A. with heavy costs in the interest of justice.”*

2. At the very outset it may be noticed that the issue involved in the present O.A. relates to payment of disability element of disability pension, as such, the delay in filing the O.A. was condoned vide order dated 26.03.2019.

3. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 31.10.1994 and was discharged from service on 31.10.2016 in Low Medical Category S₁H₁A₁ P₂ (P) E₁ on fulfilling the conditions of his enrolment. At the time of release from service, the Release Medical Board (RMB) held at Military Hospital, Allahabad on 29.02.2016 assessed his disability ‘**PRIMARY HYPERTENSION**’ @ 30% for life and opined the

disability to be aggravated by military service. However, the Principal Controller of Defence Accounts (Pensions), Allahabad rejected claim of disability pension of the applicant on the ground that the disease was detected in peace i.e. Bhatinda. Being aggrieved, the applicant preferred first appeal on 11.10.2017 which was also rejected vide order dated 31.05.2018. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned Counsel for the applicant vehemently argued that the applicant was recruited in a fit state at the time of enrolment and has no personal or family history of said ailments. He further submitted that it is the admitted case of the respondents that the disease suffered by the applicant was aggravated by military service and since the disability was assessed by the RMB to be aggravated by military service, as such, the claim of the applicant for grant of disability pension could not be rejected by the Principal Controller of Defence Accounts (Pensions) Allahabad. He further submitted that as per the policy on the point of rounding off of disability pension, the disability @ 30% as assessed by the IMB deserves to be rounded off to 50%.

5. Refuting arguments of learned counsel for the applicant, learned Counsel for the respondents argued that though the RMB has considered disability due to '**PRIMARY HYPERTENSION**' as aggravated by military service and the disability has been assessed as 30% for life, but the pension sanctioning authority i.e.

Principal Controller of Defence Accounts (Pensions) Allahabad has rejected the claim of the applicant as such in view of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I), the applicant is not entitled to the disability pension.

6. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also perused the record.

7. In the case in hand, the RMB held on 29.02.2016 has assessed the disability of the applicant '**PRIMARY HYPERTENSION**' @ 30% for life to be aggravated by military service. However, the Principal Controller of Defence Accounts (Pensions) Allahabad has over-ruled the opinion of the RMB without examination of the applicant by another Medical Board. The law on supremacy of the opinion of a Medical Board is No more RESPONDENTS INTEGRA. Hon'ble the Supreme Court in the case of *Ex Sapper Mohinder Singh vs. Union of India* (Civil Appeal No. 104 of 1993, decided on 14.01.1993 has held that opinion of the Medical Board cannot be over-ruled by higher chain of command without physical medical examination of the claimant. The relevant portion of the decision (supra) may be excerpted as under:-

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the

case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

8. Thus in light of above Judgment, we set aside the order of Principal Controller of Defence Accounts (Pensions), Allahabad and agree with the opinion of RMB and consider applicant's disability '**PRIMARY HYPERTENSION**' @ 30% for life to be aggravated by military service.

9. So far as applicant's claim for admissibility of benefit of rounding off of disability pension is concerned, we are of the opinion that the case of applicant is squarely covered by the Hon'ble Supreme Court Judgment of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014) and therefore find him entitled to the benefit rounding off.

10. In view of the discussion held above, this **Original Application No. 222 of 2019** deserves to be allowed and is hereby **allowed**. The impugned order dated 31.05.2018, enclosed as Annexure No. 11 of this Original Application, is set aside. The respondents are directed to grant disability element to the applicant

@ 30% for life which shall be rounded off from 30% to 50% for life from the date of discharge of the applicant i.e. 01.11.2016. The respondents shall comply with this order within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 9% per annum to the applicant on the amount accrued till the date of actual payment.

No order as to cost.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: March, 2019

AKD/-