

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 51 of 2019

Wednesday, this the 27th day of March, 2019

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

No. 6816648 Ex. Naik Khacheru Singh, S/o Late Khajan Singh,
R/o Village Khair Pur, PO Saidpur, District Bulandshahar (U.P.).

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Army Medical Corps, Records, Lucknow.
4. Principal Controller of Defence Accounts (Pensions), Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri R.C. Shukla**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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

- (i) *to quash AMC Records letter No D/6816648/BPR-II dated 02 June 99 and letter No D/6816648/DP dated 14 Feb 2005 (Annexure A-2 and A-3 to OA).*
- (ii) *To direct the respondents to grant disability pension to the applicant as per his entitlement, w.e.f. the date of his discharge from the service i.e. 29 April 1971.*
- (iii) *Thereafter, round of this disability percentage of pension to 50% for the purpose of payment of pension as per the policy on the subject and pay the arrears of pension with interest.*
- (iv) *Any other relief which the Hon’ble Tribunal may think just and proper may be granted to the applicant.*
- (v) *Cost of the case may be awarded in favour of the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Army Medical Corps in Indian Army on 03.05.1963 and was discharged on 29.04.1971 in Low Medical Category EEE (Permanent) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Invaliding Medical Board (IMB) held at Command Hospital (Central Command) on 02.02.1971 assessed his disability ‘**NEUROSIS (CHRONIC ANXIETY STATE)**’ @ 30% for two years but opined the disability to be neither

attributable to nor aggravated (NANA) by military service. The initial claim of disability was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad on 17.05.1971. However, a sum of Rs.1286.25 on account of Invalid Gratuity was granted to the applicant. The applicant preferred petition for grant of disability pension but the disability pension has not been granted vide letter dated 02.06.1999. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**NEUROSIS (CHRONIC ANXIETY STATE)**' has been regarded as 30% for two

years by IMB. However, since the disability was opined by IMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was rightly rejected. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the

Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].
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29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disability '**NEUROSIS (CHRONIC ANXIETY STATE)**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability was first detected in the year 1970 whereas the applicant was enrolled in the year 1963 i.e. after about seven years of military service. We

are therefore of the considered opinion that the reasons given in IMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for two years from the date of his discharge i.e. 29.04.1971.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 29.04.1971.

9. Since the applicant's IMB was valid for two years w.e.f. 29.04.1971, hence, the respondents will now have to conduct a fresh RSMB for him.

10. In view of the above, the **Original Application No.51 of 2019** deserves to be partly allowed, hence, **partly allowed**. The impugned orders dated 02.06.1999 and 14.02.2005, enclosed as Annexure No. A-2 and A-3 of the Original Application, are set aside. The disability of the applicant "**NEUROSIS (CHRONIC ANXIETY STATE)**" is to be considered as aggravated by military service. The applicant is held to be entitled to disability pension @30% for two years from the date of discharge i.e. 29.04.1971. The arrears of disability pension shall however be restricted three

years before the date of filing of Original Application. Hence, the applicant will be entitled to arrears of service element only from three years before filing of this Original Application i.e. 30.05.2018. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 9% per annum till the date of actual payment.

No order as to costs.

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

Dated: March, 2019
AKD/-

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