

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

Original Application No. 182 of 2019

Wednesday, this the 27th day of March, 2019

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

Narendra Singh (No.2684444-N (Ex Gdr) son of Sri Bharat Singh, resident of Village Jhera, Post Khedlana, Tehsil Nakud, district Saharanpur.

.....Applicant

Ld. Counsel for the applicant : **Shri SD Singh Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Officer-in-Charge Grenadiers Records, PIN-908776, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Sri Shyam Singh,**
Respondents **Addl Central Government Counsel.**

ORDER

Delivered by Hon'ble Mr. Justice SVS Rathore (Member-J)

1. Aggrieved by denial to grant disability pension, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(i) This Hon'ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 31.3.1994 (invalided out for being medically unfit towards his disability, 1 NEUROSIS (Hysteria) ICD 300 DV-67 and 2

OSTEOLYTIC LESION SKULL (Old) ICO 731 V-67 composite 40% Medical category 'CEE (Permanent).

(ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant."

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 24 years, 03 months and 13 days. Since payment of pension involves recurring cause of action, as such, we condone the delay in approaching the Tribunal, admit the petition and with the consent of learned counsel for the parties proceed to decide the petition at the admission stage itself.

3. The factual matrix of the case as would be borne out from the pleadings on record are that the applicant was enrolled in the Indian Army on 27.05.1989 and was discharged from service on 31.03.1994 after putting in service of about 4 years and 7 months. The medical board held before discharge considered the disability for (i) NEUROSIS (Hysteria) ICD 300 DV-67 and (ii) OSTEOLYTIC LESION SKULL (Old) ICO 731 V-67. The Invaliding Medical Board (IMB) opined disability No. 1 to be constitutional in nature and disability No. 2 as neither attributable to nor aggravated by military service (NANA) and assessed both the disabilities as 30% and 15-19% respectively for two years. It is pleaded by the applicant that he represented his case for grant of disability pension which was rejected. No document has been placed on record by the applicant to

give credence to this averment on the ground that the copy of the representation has been lost from the house of the applicant.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition thereafter he has been discharged in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

5. Learned counsel for the respondents has not disputed that the applicant suffered two disabilities i.e. (i) NEUROSIS (Hysteria) ICD 300 DV-67 @ 30% and (ii) OSTEOLYTIC LESIONS KULL (Old) ICO 731 V-67 @ 15–19 % for duration of two years, composite disability being 40%, but submitted that the disability due to the said diseases was considered as constitutional in nature and neither attributable nor aggravated by military service. Thus, in terms of Para 173 of Pension Regulations, his claim for disability pension has correctly been rejected.

6. We have heard learned counsel for the applicant and learned counsel for the respondents and perused the record. The only question which needs to be decided by us is as to whether the disability of the applicant is attributable to or aggravated by military service.

7. In the case in hand, no counter affidavit has been filed by the respondents. However, we have perused the report of the Invaliding Medical Board in detail and find that both his disabilities, i.e. (i) NEUROSIS (Hysteria) ICD 300 DV-67 and (ii) OSTEOLYTIC LESION SKULL (Old) ICO 731 V-67 were first detected after three

and a half years of his enrollment. The IMB has given a very cryptic one line statement to declare both the diseases as NANA, i.e. constitutional in nature and not connected with military service. We do not find this one line cryptic statement good enough to deny attributability of both these diseases to the 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 benefit of doubt in this case must go to the applicant, hence both the disabilities of the applicant are to be considered as attributable to military service.

8. Since the Medical Board has assessed the composite disability of the applicant as 40% for two years, as such, keeping in view the judgment of *Veer Pal Singh vs. Ministry of Defence & ors*, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to reassess future entitlement of disability element, if any.

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). In the light of the law of limitation, the arrears for rounding off cannot be extended beyond three years of filing the O.A. In the instant case, since the applicant has been discharged on 31.03.1994 and the inception of rounding off of disability pension was applicable to such army personnel who were discharged from service with effect from 01.01.1996, as such the prayer made by the applicant for rounding off of the disability pension cannot be granted.

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

11. Accordingly the O.A. is **partly allowed**. The applicant is entitled to disability pension @ 40% for two years from the date of discharge i.e. 31.03.1994. The arrears of disability pension shall however be restricted to three years before the date of filing of this O.A. Hence, the applicant will be entitled to arrears of service element only from three years before the date of filing of this O.A. i.e. 15.01.2019. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for deciding future entitlement of disability element. The respondents shall give effect to this order within a period of three months from the date of receipt of a certified copy of this order failing which 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

anb

(Justice SVS Rathore)
Member (J)