

Court No.1
Reserved Judgment

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

Original Application No. 113 of 2018

Thursday, this the 28th day of March, 2019

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

IC-35197A Col Akhila Nand Pandey
S/o Sri Vishwa Nath Pandey
R/o C-1/46 Vikrant Khand
Gomti Nagar, District - Lucknow (UP)

..... **Applicant**

Ld. Counsel for : **Shri S.G. Singh, Advocate**
the Applicant

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. Second Appellate Authority Adjutant General Branch (MP- 5&6) Integrated Headquarter of the Ministry of Defence (Army) West Block, RK Puram, New Delhi – 110066.
4. 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 – 110001.
5. Additional Directorate General Personal Service Adjutant General's Branch, Integrated Headquarter of the Ministry of Defence (Army), DHQ PO, New Delhi – 110011.

.....**Respondents**

Ld. Counsel for the : **Dr. Gyan Singh,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

“(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 30.06.2017, 20.06.2016 and 28.10.2013 whereby rejecting the claim of the applicant for disability pension annexed as Annexure No. A-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 10.06.1978 and retired from service on 31.03.2011 (afternoon) on attaining the age of superannuation. At the time of retirement, since the applicant was in low medical category, he was brought before a duly constituted Release Medical Board and the disabilities of the applicant for the disability (i) ID “**PRIMARY HYPERTENSION**” was assessed 30% for life, (ii) ID “**MIGRANE**” was assessed 15-19% for life, and (iii) ID “**TYPE 2 DIABETES MELLITUS**” was assessed as 20% for life and all three disabilities were considered as neither attributable to nor aggravated by military service. However, net

assessment for disability pension for ID (i) was 30% for life and for remaining ID (ii) & (iii), net assessment was NIL for life. The claim of the applicant for grant of disability pension was rejected by Additional Directorate General Personnel Services, New Delhi vide order dated 28.10.2013. His first and second appeals were also rejected by First/Second Appellate Committee vide orders dated 20.06.2016 and 30.06.2017 respectively.

3. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present Original Application.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by the applicant after joining the service should be attributable to military service and the applicant is entitled to grant of disability pension. In this connection, Ld. Counsel for the applicant has relied upon verdict of Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013).

5. Learned Counsel for the respondents submitted that disability pension claim of the applicant was rightly rejected as per Regulation 81 of Pension Regulations for the Army 2008, Part-I, being NANA case which stipulates that unless otherwise

specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non battle casualty cases and the disability is assessed 20% or more.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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)]. [pic]

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)."

8. Thus considering all issues, we feel that denial of attributability to military service only on the ground that the disease is not related to service and started in peace area and not in Fd/HAA/CI Ops tenure amounts to being unfair to the applicant. This amounts to saying that there is no stress & strain of military service in peace area. This doesn't appear to match the ground realities of military service. Therefore, we are of the considered opinion that the benefit of doubt should be given to the applicant in view of the law settled by the Hon'ble Supreme Court on this matter.

9. In view of the above, we are of the view that the applicant's ID No. (i) **"PRIMARY HYPERTENSION"** is to be

considered as Aggravated by military service and the applicant is entitled to the benefit of rounding off of his disability pension in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). We agree with the RMB that the other two disabilities are NANA.

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

11. Accordingly, the Original Application is **partly allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant for disability '**PRIMARY HYPERTENSION**' @ 30% for life which shall be rounded off to 50% for life from from three years prior to the filing of the present Original Application. The date of filing of Original Application is 16.02.2018. The respondents are 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 S.V.S. Rathore)
Member (J)

Dated: March, 2019
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