

**Reserved
Court No. 1**

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

Original Application No. 47 of 2019

Friday, this the 29th day of March, 2019

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

Ex SGT No.776637 Ravi Chaturvedi, son of Shri Krishna Kumar Chaturvedi, resident of C/o Ramjeevan Pandey, Post Auraiya, district – Auraiya (UP) 206122.

.....Applicant

Ld. Counsel for: **Shri Manoj Kumar Awasthi &**
the applicant **Shri Ayushman Srivastava, Advocates.**

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters (Vayu Bhawan) Rafi Marg, New Delhi - 11011
3. Principal Director, Directorate of Air Veterans, Subroto Park, New Delhi – 110010
4. The Dir-III (Appeal), Directorate of Air Veterans, Subroto Park, New Delh – 110010
5. PCDA (Pension) Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Shri Mohd Zafar Khan,**
Respondents **Addl Central Government Counsel.**

ORDER

Delivered by Hon'ble Air Marshal BBP Sinha (Member-A)

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

“(a) To quash and set aside the impugned order dated 12.6.2018, annexed as Annexure No. 1.

(b) to direct the respondents to grant Disability Pension element as well as Disability Element @ 40% with effect from 30.11.2017, i.e. the date of discharge and further Rounding off of Disability pension from 40% to 2 50% for life to the applicant and pay due arrears including consequential benefits with interest @ 12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case be also granted along with costs of the O.A.”

2. The only issue involved in this petition revolves around grant of disability pension and its broad banding, which involves recurring cause of action, as such, the delay of one year and four months in preferring the petition has been condoned vide order dated 18.01.2019. Learned counsel for the parties agree that the petition can be disposed of on the basis of pleadings on record without exchange of affidavits, as such with the consent of learned counsel for the parties we proceed to hear and dispose of the petition at this stage.

3. The factual matrix of the case as would be borne out from the pleadings on record is that the applicant was enrolled as Airman in the Indian Air Force on 17.11.1997 and after completion of service tenure

of approximately fourteen years, he was discharged from service on 30.11.2017 in low medical category. The Release Medical Board (RMB) held before discharge considered the disability for (i) MCL Tear Rt Knee (Old) and (ii) Diabetes Mellitus (Old). The Release Medical Board (RMB) opined both the disabilities as “neither attributable to nor aggravated” (NANA) by military service and assessed both the disabilities as 20% respectively for life. The Release Medical Board has commented upon that the disability i.e. MCL Tear Rt Knee (Old) was sustained by the applicant while playing cricket in December 2001 in Chhabua. (Dibrugarh, Assam). Consequently, the Principal Director, Directorate of Air Veterans (respondent no. 3) issued rejection order dated 12.06.2018 regarding the disability claim of the applicant. It is pleaded by the applicant that he preferred first appeal dated 05.07.2018 against impugned order of rejection dated 12.06.2018 which is yet to see the light of the day

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and 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) MCL Tear Rt Knee (Old) @ 20% and (ii) Diabetes Mellitus (Old) @ 20% for life, the composite disability being 40%, but submitted that the disability due to the first disability was on account of playing cricket and both the disabilities

were opined by the Medical Board as “neither attributable to nor connected with 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 disabilities of the applicant are 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 Release Medical Board in detail and find that the Medical Board has noted that the disability i.e. MCL Tear Rt Knee (Old) was received by the applicant while playing cricket as far back as in December, 2001 in a far flung and remote place like Chhabua. (Dibrugarh, Assam). It is well known that Armed Forces personnel are required to maintain high physical fitness standards, as such, sports activities are encouraged in Armed Forces. Thus, if an initial disability is caused on account of playing sports, the subsequent complications over the years shall normally be considered as aggravated by military service. The IMB has given a very cryptic one line statement to declare the disability as NANA, i.e. “not connected with military service”. We are unable to agree with this logic. We feel that such sports activities and other fitness activities are encouraged by the Armed Forces as an organizational requirement. Therefore, the applicant deserves to be given the benefit of doubt in line with the law settled on this issue by

Hon'ble Supreme Court in the case of *Dharamvir Singh vs. Union of India & Ors*, (2013) 7 SCC 316. Admittedly, the applicant has put in more than 20 years before being discharged. The cryptic statement given by the IMB to declare the disability of the applicant as NANA, i.e. "not connected with service", in the totality of circumstances, is not good enough to deny attributability of the disability to the applicant. Therefore, in terms of judgment of *Dharamvir Singh* (Supra) and *Sukhvinder Singh vs. Union of India*, reported in (2014) 14 SCC 364, the applicant's disability "MCL Tear Rt Knee (Old)" is to be considered as aggravated by military service.

8. Adverting to the second disability suffered by the applicant, i.e. Diabetes Mellitus (Old), we agree with the opinion of the RMB that said disease was neither attributable to nor aggravated by service.

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) and the applicant s entitled to be benefit of rounding off of disability pension.

9. It is trite law that 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 their Lordship's of Hon'ble Apex Court have held 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. Accordingly the O.A. is **partly allowed**. Order dated 12.06.2018 is hereby set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life for disability "MCL Tear Rt Knee (Old)", which would stand rounded off to 50% for life from the date of discharge, i.e. 30.11.2017. 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 failing which the respondents 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)

(Justice SVS Rathore)
Member (J)

Dated: March 29 , 2019
anb