

Reserved
Court No. 1

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

Original Application No. 599 of 2018

Tuesday, this the 26th day of March, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Havildar Anand Singh (Army No. 4163048-W) of 589 DSC Platoon attached to 789 SU AF, PIN-907789, C/o 56 APO, son of late Bala Singh, resident of Village Haripura Harshan (Dhuriya), Post Office Haripura Harshan (Bazpur) Tehsil Bazpur, district Udham Singh Nagar, Uttarakhand PIN 262401.

.....Applicant

Ld. Counsel for : **Shri KKS Bisht, Advocate**
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Defence Security Corps Records, PIN 901277, c/o 56 APO.
4. Principal Controller Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP) – 211014.

.....Respondents

Counsel for the : **Sri Amit Jaiswal,**
Respondents **Addl Central Government Counsel.**

ORDER

Delivered by Hon'ble Mr Justice SVS Rahore, (Member-J)

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension with the following prayers:

“(a) Issue/pass an order or direction to quash/set-aside the impugned rejection order passed by the DSC, respondent no. 3 vide letter No. Pen/DP-4/4163048-W/Vol-77/288 dated 03 Jun 2010 after summoning the same from the respondents considering it arbitrary and illegal.

(b) Issue/pass an order or direction to quash/set-aside the arbitrary and illegal letter No. Pen/DP-2/4163048 dated 14 June 2011 (Annexure No. A-1) vide which the respondent no. 3 refused to entertain the petition preferred by the applicant considering as appeal against rejection of disability pension at belated stage.

(c) Issue/pass an order or direction to the respondents to grant 30% disability pension for life to the applicant from the date of his discharge i.e. 30-04-2010 and also to round off the disability pension from 30% to 50% for life.

(d) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this petition with costs.”

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 07 years, 03 months and 04 days. Since payment of pension involves recurring cause of action, as such, vide order dated 13.12.2018, delay in filing the petition was condoned. Learned counsel for the parties submitted that the petition can be disposed on the basis of pleadings on record, as such, with the consent of learned counsel for the parties, we proceed to hear and dispose of the petition.

3. Couched in brevity, the undisputed facts are that the applicant was enrolled in the Indian Army on 13.04.1971 and after serving the Army for 22 years and 17 days was discharged on 01.05.1993. Thereafter, the applicant was inducted in the Defence Security Corps (DSC) as Sepoy in medically fit condition and after serving for 15 years and 08 months in the DSC., he was discharged on 30.04.2010

under Rule`13 (3) III (i) of the Army Rules, 1954. The Release Medical Board held before discharge considered the disability for “PRIMARY HYPERTENSION” and opined the disease as ‘neither attributable nor aggravated’ (NANA) by Military service and assessed it as 30% for life. The Medical Board further assessed the disability qualifying for disability pension as NIL for life. Aggrieved with non-payment of disability pension, the applicant preferred representation which were rejected by the appropriate authority, hence the present petition.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in 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. The respondents have not filed counter affidavit. However, the respondents have produced a copy of the Release Medical Board (RMB). Learned counsel for the respondents has not disputed that the applicant suffered disability to the extent of 30 % for life, but submitted that the disability due “PRIMARY HYPERTENSION” was considered as neither attributable to nor aggravated by military service (NANA), as such, in terms of Para 173 of Pension Regulations, his claim has rightly been rejected.

6. We have heard learned counsel for both the parties and have perused the copy of the RMB in detail. In the instant case, the only

question which requires to be answered is as to whether the disability of the applicant is attributable to or aggravated by military service.

7. We have noticed that the only reason given by the RMB for declaring the disease as NANA is that it has not started in peace area and not in a Field, High Altitude Area or Counter Insurgency Operation Area. We do not agree with this logic which amounts to saying that there is no stress and strain of military services in peace areas. 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 and the applicant's disability "PRIMARY HYPERTENSION" is to be considered as aggravated by military service.

8. 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 well settled that the 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 the law settled by the Hon'ble Apex Court is 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. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to grant disability pension to the applicant @ 30 for life which would stand rounded off to 50% for life from three years prior to the filing of the present Original Application, i.e. from 08.03.2015. 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)

Dated: March, 2019
anb

(Justice SVS Rathore)
Member (J)