Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 102 of 2019

Monday, this the 22nd day of March, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 10405818K Ex Sepoy Mohd Adil
S/o Sri Mohd Amil
R/o Vill & Post – Sarawani
Distt – Hapur (UP)

…... **Applicant**

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.

2. Chief of Army Staff, Army Headquarters, New Delhi.

3. Officer-in-Charge, Records, The JAT Regiment, Bareilly.

4. PCDA (Pension) Allahabad.

…..... **Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel.

ORDER

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

> "(i). To quash Records, The JAT Regiment, Bareilly letter No 10405818/SR-JR/NEL-II dated 06 May 2016.
>
> (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. 15 Nov. 2002.

(iii) Thereafter, round of this disability percentage of pension o 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. Brief facts of the case are that the applicant was enrolled in 114 Infantry Battalion Territorial Army (JAT) on 01.01.1995 as Sepoy. The applicant was downgraded to low medical category CEE (Temporary) w.e.f. 03.07.2000 for disability "**LOW BACKACHE WITH SACRALISTION OF LV-5 (BIL)"** by Medical Categorisation Board. During subsequent Re-categorisation Medical Board, applicant was placed in low medical category P3 (Permanent) w.e.f. 03.07.2001. Being downgraded to permanent low medical category, applicant was required to be discharged from the service "as service no longer required" and accordingly, he was discharged from TA service on 15.11.2001 (AN) under Para 3(c) of Army Order 460/73 and Rule 14 (b) (iii) of the Territorial Army Act Rules 1948. The Release Medical Board (RMB) assessed his disability "**LOW BACKACHE WITH SACRALISTION OF LV-5 (BIL)"** @ 15-19% for two years and was considered as neither attributable to nor aggravated by military service (NANA). After lapse of almost 15 years the applicant served a petition dated 18.04.2016 which was replied by the respondents communicating the reasons for non grant of disability pension vide

order dated 06.05.2016. It is in this perspective that this O.A. has been filed for grant of disability pension.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, disability suffered during service is attributable to military service. Learned counsel for the applicant also relied upon judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India and Others*** (Civil Appeal No. 4949 of 2010, arising out of SLP No. 6940 of 2010 and ***Sukhvinder Singh vs. Union of India*****,** reported in (2014) STPL (WEB) 468 SC and submitted that if disability is not detected prior to the enrolment so disability to be deemed as attributable to service and pleaded that disability pension be granted to the applicant and benefit of rounding off to 50% also to be given from the date of discharge as per policy on the subject.

4. On the other hand, learned counsel for the respondents submitted that applicant has been denied the disability pension on the ground that his disability is assessed less than 20%. He further emphasised that competent authority has rightly rejected the disability pension claim in terms of Para 173 and 198 of Pension Regulations for the Army 1961, Part-1 and Rule 15 of Entitlement Rules for Casualty Pensionary Awards, 1982.

5. Learned counsel for the respondents further submitted that as per Regulation 198 of Pension Regulations for the Army 1961, Part-1,

the minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible. Since the applicant had not rendered minimum 10 years embodied service, accordingly, he was paid a sum of Rs. 9489/- towards invalid gratuity.

6. We have heard learned counsel of both sides and found that moot question involved in this case is whether disability pension is payable to an incumbent whose disability is less than 20%?

7. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors*****,** (2013) 7 SCC 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)]. [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. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for his disability for the reason by declaring the disease as NANA. However, on further scrutiny, we have observed that this disability was initially detected in the year 2000 after five years of service when the applicant was medically downgraded (Temporary). We are, therefore, of the considered opinion that the reasons given in RMB for declaring this disability as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his first disability should be considered as aggravated by military service.

9. On the issue of grant of disability pension, we would also like to recall the judgment passed in the case of **Sukhhvinder Singh Vs. Union of India,** reported in (2014) STPL (WEB) 468 SC, in para 9 of the judgment Hon'ble The Apex Court has held as under:-

> *"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Th*irdly, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below 20 percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above 20%. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension."

10. In view of above judgments of the Hon'ble Apex Court, Release Medical Board (RMB) of the applicant is presumed to be Invaliding Medical Board (IMB) as no sheltered appointment was given to the applicant resulting applicant was discharged after five years and 10 months service and therefore, applicant is held entitled to 15-19% disability pension for life from the date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability pension from 15-19% to 50% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

11. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability pension @ 15-19% for life duly rounded off to 50% for life

from the date of discharge from service. The respondents are directed to grant disability pension @ 50% for life from the date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** *(2007 (3) SLR 445*), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 23.03.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: March, 2021
SB