

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 127 of 2020

Lt Col Rakhal Chandra Raut
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>28.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Yashhpal Singh, learned counsel for the applicant and Shri Rajiv Pandey, learned counsel for the respondents are present.</p> <p>1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">“(a) Issue/pass an order or direction setting aside the recommendations of the Release Medical Board held on 22.10.2019 to the extent it holds the disabilities neither attributable to nor aggravated by military service, and order/letter dated 12.12.2019 passed/issued by Additional Director General Personnel Services rejecting the claim of the applicant for grant of disability pension, after summoning the relevant original records; and directing the respondents to reconsider and grant disability pension extending the benefit of rounding from the date of retirement including arrears thereof with interest.</p> <p style="padding-left: 40px;">(b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.</p> <p style="padding-left: 40px;">(c) Allow this Original Application with cost.</p> <p>3. Brief facts of the case giving rise to this application are that applicant was enrolled in the Army Medical Corps as a Sepoy on 02.01.1987, thereafter commissioned in the Army Medical Corps on 02.04.2004 and superannuated on 01.06.2020. At the time of superannuation he was in low medical category for disabilities 'PRIMARY HYPERTENSION WITH HYPERTENSIVE HEART DISEASE', 'DIABETES MELITUS TYPE II' and 'DYSLIPIDEMIA'. Release Medical Board (RMB) was held on 22.10.2019 which assessed the applicant's disabilities @ 30% for life, 20% for life and 5% for life respectively neither</p>

attributable to nor aggravated by military service. Disability pension claim preferred by applicant was rejected vide order dated 12.12.2019 with an advice to prefer an appeal to the Appellate Committee but applicant did not prefer the same and has filed the present O.A. for grant of disability pension.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there is 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 considered as attributable to or aggravated by military service and the applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of learned counsel for the applicant is that since the aforesaid disease is due to stress and strain related rigors of military service, these should be considered either attributable to or aggravated by military service.

5. On the other hand, learned counsel for the respondents argued that since RMB has declared the applicant's disability as NANA, he is not entitled to disability pension. His further submission is that the competent authority has rightly rejected applicant's disability pension claim on the ground of disability being not related to military service, therefore, O.A. deserves to be dismissed.

6. Heard the learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service? and whether he was invalidated out or discharged/superannuated on completion of terms of engagements?

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 213. 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 the applicant only by endorsing a cryptic sentence in the medical board proceedings i.e. the disability has occurred to applicant while he was posted in peace station. We have noticed that prior to peace station, the applicant has served in field station which may have caused aforesaid diseases. There seems to be close time association with stress/strain of service in Fd/HAA/CI Ops. We feel that such a

discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of enrolment/commission must be presumed to have been caused subsequently, and, unless proved to the contrary to be a consequences of military service. The benefit of doubt, therefore, shall be rightly extended in favour of the applicant. In the instant case, since the applicant was found to be suffering from disability when he had put in more than 32 years of service, it should be deemed to be aggravated by military service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the applicant should be considered as aggravated by military service. It is also well settled in law in terms of ***Union of India & Ors vs Wing Commander SP Rathore***, Civil Appeal No 10870 of 2018 decided on 11.12.2019 that if the disability is assessed @ 20% and more when the person is discharged on completion of terms of engagement, he will be eligible for disability pension.

9. In view of the above the applicant is held entitled to 46.8% disability element for life which shall stand rounded off to 50% disability element for life from the date of his superannuation in terms of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 12.12.2019 is set aside. The disability of applicant is held aggravated by military service and the benefit of rounding off to 50% is extended. The respondents are directed to complete the entire exercise within four months from today and pay disability element to applicant alongwith arrears from the date of retirement i.e. 01.06.2020.

11. Default will invite interest @ 8% p.a.

12. No order as to costs.

13. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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