

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 158 of 2019**Monday, this the 01st day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 776686-W Ex Hav Jagdish Singh S/O Dafedar Singh, R/O Qtr No. 87, Sadar Bazar, Cantt, Faizabad, U.P. (India).

..... Applicant

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), Army Headquarters, South Block, New Delhi.
3. Addl Dte Gen Personnel Services, Adjutant General's Branch, IHQ of MoD (Army), Room No-11, Plot No-108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. O.I.C. Records, EME Records, PIN-900453, C/O 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the
Respondents.:**Shri GS Sikarwar**,
Central Govt. Standing Counsel

ORDER

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

- (a) *To issue/pass an order or directions to set-aside/quash the arbitrary order of rejection of the claim for disability pension passed by the respondent No. 3 whose information has been received by letter dated 31.10.2017 and rejection of disability pension claim vide letter dated 30.06.1997*
- (b) *To issue/pass an order or direction to the respondents to grant the disability element of disability pension to the applicant from date of discharge i.e. 31.04.1994 to Two years.*
- (c) *To issue/pass an order or direction to the respondents to grant rounding off the disability pension from date of discharge @ 20% to 50% in light of Apex Court case i.e. Union of India versus Ram Avtar.*
- (d) *To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (e) *To allow this original application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 24.07.1971 and was discharged from service in low medical category CEE (permt) on 31.01.1994 in terms of Rule 13 (3) III (i) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held at Military Hospital, Bareilly on 20.09.1993 which assessed the applicant to be suffering from '**CSR (RT) EYE OLD**' @ 20% for two years and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 30.06.1997. Thereafter first and second appeals were rejected vide order dated 30.06.1997 and 31.10.2017 respectively. This O.A. has been filed for grant of disability element of pension. The applicant is in receipt of service pension with effect from his date of discharge.

9. Learned 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 considered as attributable to or aggravated by military service in terms of para 423 (c) of Pension

Regulations for the Army 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 the applicant, in 1992 while posted at Khemkaran (Punjab), was diagnosed to be suffering from the aforesaid disability. This disease he feels is due to stress and strain related rigors of military service. He concluded by pleading for grant of disability pension to the applicant.

10. On the other hand, learned counsel for the respondents argued that the RMB has declared the applicant's disability as NANA. He further submitted that the competent authority has rightly rejected claim of disability pension on the grounds of NANA. The ground of rejection of the claim is aligned with the opinion of RMB which declared the disease as NANA on grounds that the disease was not connected to conditions of service.

11. 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?

12. 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)."

13. 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 proceedings i.e. 'No relation to service condition'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in December 1993 i.e. after completion of about 18 years of his service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Apex Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service.

14. In view of the above the applicant is held entitled to 20% disability element for two years from his date of discharge.

15. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service and applicant is entitled to disability element @ 20%

for two years from date of discharge. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

16. No order as to costs.

17. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)
rathore

(Justice Umesh Chandra Srivastava)
Member (J)