

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 421 of 2018**Tuesday, this the 23rd day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Jai Bahadur Singh (No. 2975027F Ex Hav)
S/o Late Kalika Singh
R/o Village & Post – Dumraon,
Distt – Mau-275191 (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra**, Advocate

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi -11.
3. The Officer-In-Charge, Records The Mech Inf Regt, Amhednagar-414110.
4. The Chief Control Defence Accounts, Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt Counsel.**ORDER**

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

“(I) Hon'ble Tribunal may be pleased to set aside order dated 26/06/2002 (Annexure No A-1) and order dated 21/09/2007 (Annexure No. A-2).

(II) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 08/08/1999 for life along with the interest at the rate of 18% per annum.

(III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar's case.

(IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 27.07.1978 and was invalided out of service on 07.08.1999 (AN) under Army Rule 13 (3) III (iii) in low medical category 'EEE' . His Invaliding Medical Board (IMB) was conducted on 15.07.1999 which assessed applicant's disability "**ALCOHOL DEPENDENCE SYNDROME**" @ 11-14% for five years neither attributable to nor aggravated by military service. His disability pension claim was rejected by PCDA (P) Allahabad vide letter dated 06.06.2002. The applicant submitted an appeal after laps of five years which was suitably replied by the respondents rejecting it being time barred. It is in this perspective that this O.A. has been filed.

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, whatever disease with which applicant suffered during service is attributable to military service as has been rightly assessed by IMB. He submitted that the act of overruling the

recommendations of IMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgments of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (2013) AIR SCW 4236, ***Union of India & Ors vs. Rajvir Singh*** (2015) 12 SCC 264, ***Union of India & Ors vs. Angad Singh Titaria*** (2015) 12 SCC 257 and ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364 and pleaded that applicant also be granted disability pension duly rounded off to 50% as per Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as 11-14% for five years by IMB as neither attributable to nor aggravated by military service. The disability is not connected with service as alcohol consumption is his personal habit due to his own negligence. Hence, as per Rule 173, 179 and 198 of Pension Regulations for the Army 1961 (Part-1) and Para 53, 81 and 95 of Pension Regulations for the Army, 2008, applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Ld. Counsel for the respondents emphasised that competent authority has rightly rejected the disability pension claim in terms of Para 53 (a) of Pension Regulations for the Army, 2008 (Part-I) which reads as under:-

“An individual released/retired/discharged on completion of term of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical

Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20 percent or more.”

6. Learned counsel for the respondents further submitted that since the percentage of disability in this case is less than 20%, therefore, applicant is not entitled to disability pension and O.A. deserves to be dismissed.

7. 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%?

8. A bare reading of Para 53 (a) of Pension Regulations for the Army, 2008 makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. In addition, the disability caused due to his own negligence being a habitual offender of alcohol consumption which is not connected with service. Hence, the applicant is not entitled for disability element.

9. In view of above, the O.A. is liable to be dismissed and is therefore **dismissed**.

10. No order as to costs.

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

Dated: February, 2021

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