

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH NAINITAL)**

Original Application No 537 of 2020

Monday, this the 8th day of March, 2021

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

No. 14919952F Ex Hav (ACP-1) Balwant Singh

S/o Sri Shyam Lal

R/o Village & Post – Kundari,

Tehsil – Dev Prayag, District Tihri Garhwal, Uttarakhand 249122.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Director General, Medical Services (Army) AG's Branch, L Block, New Delhi – 110001.
4. Senior Record Officer, for OIC Records, Mech Inf Regt, Pin 900476, C/o 56 APO.
5. Commandant, 9 MECH INF, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Mrs. Pushpa Bhatt**,
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:-

“1.1 To quash the impugned order dated 11.08.2016 and intimation dated 15.02.2019 by which the request of applicant for disability pension was rejected holding that after due examination of your case in consultation with the competent

medical authority and in accordance with relevant rules and the existing medical provisions, it has been decided by the competent authority that you are not entitled to Disability pension in terms of para 53 of pension Regulation for the Army 2008.

1.2 To issue order or direction to the respondents authority for granting the pensionary/disability pension to the applicant who was discharged from his military duties on the medical ground without giving any medical or disability pension also after calling the entire records from the respondents.

1.3 Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

1.4 To award the cost of this petition to the Applicant."

2. Briefly stated facts of the case are that applicant was enrolled in the Army on 01.04.1994 and discharged from service on 30.06.2016 (AN) in low medical category under Army Rule 13 (3) III (iii) (a) (i) being no sheltered appointment available. The Release Medical Board (RMB) assessed his disability "**PRIMARY HYPERTENSION**" @ 30% for life and opined the disability as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 11.08.2016. The applicant sent a legal notice dated 27.12.2018 which was suitably replied by the respondents vide order dated 05.02.2019. Thereafter, the applicant forwarded a petition under RTI dated 28.09.2019 which was replied by the respondents vide order dated 19.10.2019. Being aggrieved with denial of disability pension, the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC, 316 and ***Sukhvinder Singh vs. Union of India & Ors*** (2014 STPL (WEB) 468 SC and pleaded that applicant be granted disability pension @ 30% duly rounded off to 50% in view of 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 assessed @ 30% for life by RMB as neither attributable to nor aggravated by military service and there being no suitable alternative appointment available in low medical category, the applicant was discharged from service. Hence, as per Para 53 of Pension Regulations for the Army, 2008, part-1 and Para 173 of Pension Regulations for the Army 1961 (Part-1), the applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard 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?

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 "PRIMARY HYPERTENSION" for the reason by declaring the disease as NANA and due to non availability of suitable alternative appointment in low medical category. However, on further scrutiny, we have observed that this disability was initially detected in the year 2014 after about 20 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring it 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 second disability should be considered as aggravated by military service.

9. In view of the above, applicant is held entitled to 30% disability element for life from his date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element 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).

10. 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 element of pension @ 30% for life duly rounded off to 50% for life from the date of discharge from service. The respondents are directed to grant disability element @ 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 10.01.2020. 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.

11. No order as to costs.

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

Dated: March, 2021

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