

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 84 of 2020

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. 2869900H Ex Hav Bachan Singh, S/O Sri Lahiri Singh, R/O Vill-Tayawpur, Po-Shikarpur, Distt-Bulandsahar, (UP).

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Officer-in-Charge, Records, Rajputana Rifles, Delhi Cantt.
4. PCDA (Pension), Allahabad.

.....Respondents

Ld. Counsel for the Respondents. :**Shri Ashish Kumar Singh**,
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 quash records, Rajputana Rifles, Delhi Cantt letter No RNE/DP/2869900/03 dt 25 Aug 1998 (Annexure A-1 to O.A.).*
- (b) *To direct the respondents to grant disability pension to the applicant as per his entitlement from the date of his discharge from the service, i.e. from 01 Dec 1997.*
- (c) *Direct the respondents to pay the arrears of pension from the date as applicable with interest.*
- (d) *Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.*
- (e) *Cost of the case may be allowed.*

M.A. No. 900 of 2019

2. The Original Application has been filed with delay of 20 years, 08 months and 07 days.

3. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.

4. Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.

5. Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.

6. Accordingly, delay in filing of application is condoned. Application stands decided accordingly.

7. O.A. has already been admitted and registered vide order dated 14.01.2020.

8. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 24.11.1975 and was discharged from service in low medical category **BEE (permt)** on 30.11.1997 in terms of Rule 13 (3) III (i) (a) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held at Military Hospital, Ahmedabad on 03.07.1997

which assessed the applicant to be suffering from '**DIMUNUTION OF VISION BOTH EYES (OLD) 378, V-67 (HYPERMETROPIA WITH AMBLYOPIA B.E)**' @ 80% for five 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 30.07.1998. The records reveal that no appeal has been preferred by the applicant. This O.A. has been filed for grant of disability pension.

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 in 1993, the applicant while posted at Delhi, 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 has declared the disease as NANA on grounds that the disease has no relation to service conditions.

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 80% disability element for five years from his date of discharge.

15. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order dated 30.07.1998 is set aside. The disability of the applicant is to be considered as aggravated by military service and applicant is entitled to disability element @ 80% for five 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, say 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)

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(Justice Umesh Chandra Srivastava)
Member (J)