

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 523 of 2021

Wednesday, this the 09th day of March, 2022

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

JC-164167-A Ex Nb Sub/SKT Ramanand Singh of 259 Fd Workshop Company EME, C/o 56 APO, son of Late Kamta Prasad Singh, resident of Village & Post-Gokulpura, District-Mau (M.P.), Pincode-276402.

..... Applicant

Ld. Counsel for the : **Shri KKS Bisht**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, EME Records, PIN-900453, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Ms Preeti Mala**, Advocate
Central Govt Counsel

ORDER

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

- (i) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by PCDA (P) Allahabad, respondent No 4 vide letter No G3/IX/88/3313/400 dated 24 May 1988 (Annexure No A-1 (i) rejecting the disability element claim of the applicant.*
- (ii) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by Records, respondent No 3 vide letter No JC-164167A/DP-1/Pen dated 27 June 1988 (Annexure No A-1(ii) rejecting the disability element claim of the applicant.*
- (iii) *Issue/pass an order or direction of appropriate nature to the respondents to grant 100% disability element from the date of his discharge i.e. 31.03.1988.*
- (iv) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (v) *Allow this 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 30.09.1963 and after having completed his terms of engagement he was discharged from service in low medical category 'CEE' (permt) on 31.03.1988 (AN) in terms of Rule 13 (3) I (i) (a) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held at Command Hospital, Pune on 14.12.1987 which assessed the applicant to be suffering from 'Carcinoma Penis (187)' @ 100% for one year and opined it to be neither attributable to nor aggravated by military service (NANA).

Disability element of pension claim preferred by the applicant was rejected by PCDA (P), Allahabad vide order dated 24.05.1988 which was conveyed to the applicant by EME records on 24.06.1988 with an advice to prefer appeal within six months which he failed to do within the specified time frame. This O.A. has been filed for grant of disability element of pension after lapse of 33 years.

3. Ld. 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 Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) and the applicant should be entitled to disability pension. Ld. 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 Ld. Counsel for the applicant is that in the year 1982 he being found suffering from the aforesaid disability was downgraded to low medical category 'CEE' (temp) and later vide RMB dated 14.12.1987 it was made 'CEE' (permanent) w.e.f. the date of discharge. 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.

4. On the other hand, Ld. Counsel for the respondents pleaded that the RMB has declared the applicant's disability as NANA. His further submission is that being the disability as NANA, the pension sanctioning authority i.e. PCDA (P), Allahabad has rightly rejected claim of disability element of pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

5. Heard the Ld. 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?

6. 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)."

7. 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 the month of April, 1982 i.e. after completion of about 19 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 Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above, the applicant is held entitled to 100% disability element for one year from the date of discharge.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders dated 14.05.1988 (Annexure R-5) and 24.06.1988 (Annexure-6) are set aside. The respondents are directed to pay 100% disability element of pension to the applicant for one year after discharge within a period of four months from today, default will invite interest @ 6% p.a. The respondents are further 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.

10. No order as to costs.

11. Miscellaneous application(s), pending if any, stand disposed off.

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

Dated: 09.03.2022

rathore