

Court No. 1

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

Original Application No 947 of 2022

Tuesday, this the 21st day of March, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex - JC - 381432L Subedar (Clk/SD) Vinod Singh permanent
Resident of Village - Chamiau, Post - Paurikhal, Teh and District -
Rudraprayag, Uttarakhand.

..... Applicant

Ld. Counsel for the Applicant : **Shri Vinay Pandey, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army),
DHQ PO, New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena
Bhawan, New Delhi,
3. The Officer-in-Charge, Signals Records, PIN- 900770, C/o 56
APO.
4. Principal Controller of Defence Accounts, Draupadi Ghat,
Allahabad, (U.P).

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma,
Central Govt. Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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:-

- “(a) Issue/ pass an order or direction of appropriate nature to quash the decision taken by Army Authorities as mentioned in letter of Signals Records letter bearing No. P/JC-381432/DP-2/NER dated 11 May 2021, First Appeal Rejection vide IHQ of MoD(Army) ADGPS AG’s Branch letter bearing No. B/40502/109/2021/AG/PS- 4(Imp – II) dated 25 March 2021 and Rejection of Second Appeal vide IHQ of MoD, AG’s Branch letter bearing No. B/38046A/437/2021/AG/PS-4 (2ndAppeal) dated 03.06.2022, (Annexure No. A-1 (i), Annexure No. A-1(ii), rejecting the disability pension claim.*
- (b) Issue / pass an order or direction of appropriate nature directing the respondents to concede the attributability and aggravation of ID due to military service and grant disability pension.*
- (c) Issue / pass an order or direction of appropriate nature to quash para 8.2 of Government of India letter No. 1 (2) / 97/I/D (Pen C) dated 31.01.2001*

which deals the Disability element on disability/discharge where the disability is assessed less than 20% being ultra virus and hit by Articles 14, 2131 and 300A of Constitution of India.

- (d) Issue / pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.*
- (e) Issue / pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (f) Allow this application with costs.”*

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Army on 03.11.1990 and was discharged from service on 30.11.2020 (AN) in low medical category on completion of terms of engagement after rendering more than 29 years of service. The Release Medical Board (RMB) assessed his disabilities (i) “**NON CRITICAL CAD**” @ 30% for life, and (ii) “**PRIMARY HYPERTENSION**” @ 30% for life and composite assessment of all diseases assessed @ 50% for life and opined that disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant’s claim for grant of disability pension

was rejected by the respondents vide order dated 11.05.2021. Applicant preferred appeal against the order of rejection of disability pension which was also rejected vide order dated 03.06.2022. Being denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 50%. learned counsel for the applicant also prayed for rounding off of disability pension from 50% to 75%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities of the applicant (i) @30% and (ii) @30% for life but it opined that the disabilities are NANA and net assessment qualifying first and second disabilities is NIL. Applicant has been granted service pension for the services he has rendered in the army. Applicant is not entitled disability pension as per para 173 of Pension Regulations for the Army, 1961 (Part-I) which specifies that 'Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to and aggravated by military service in non battle casualty and is assessed at 20% or over.' He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?

(b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. After going through the opinion of the medical board, we have noted that both the disabilities have been opined as NANA by the RMB. However the composite assessment for both the disabilities have been assessed to 50% for life. The only reason for declaring the disease as NANA is that it has originated in peace area and has no close time association with Fd/CI Ops/HAA tenure. However, on further scrutiny, we have observed that this disability was detected in September 2019, after about 29 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as NANA are very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that second disability ie. "Primary Hypertension" @ 30% for life is to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra).

7. The applicant will also be eligible for the benefit of rounding off of disability from 50% to 75% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

8. Resultantly, the O.A. deserves to be allowed, hence **allowed**. Impugned order passed by the respondents rejecting disability element are set aside. The applicant's disabilities are to be considered as aggravated by military service and his disability element of pension is to be rounded off from 50% to 75% for life from the date of his discharge i.e. 30.11.2020. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

(Vice Admiral Atul Kumar Jain) **(Justice Ravindra Nath Kakkar)**
Member (A) **Member (J)**

Dated: 21 March, 2023
UKT/-