

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION (T.A.) No. 4 of 2019

Wednesday, this the 15th day of March, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Lt. Gen. Sanjay Singh, Member (A)”**

Virendra Singh, son of Shri Chhiddu Singh, resident of Village Gurashikran, Post Gurashikran, District Aligarh.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Deepak Vuttsya**, Advocate

Versus

1. The Government of India, Ministry of Defence, New Delhi, through its Defence Secretary.
2. The Director General of Supplies and Transport, quarter Master General’s Branch, Army Headquarters, D.H.Q., P.O. New Delhi-110011.
3. The Officer Incharge, Records, A.S.C. (M.T.), Bangalore.
4. The C.D.A. (P.), Allahabad.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Adesh Kumar Gputa**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The applicant had filed Civil Misc. Writ Petition No. 2105 of 1990 under Article 226 of the Constitution of India before the

Hon'ble High Court of Judicature at Allahabad which was later received by this Tribunal by transfer and was registered as Transferred Application No. 4 of 2019 for the following reliefs :-

- a) *Issue a writ, order or direction in the nature of certiorari quashing the impugned orders of discharge from service vide at Page Nos. 7 & 9 of Annexure passed by respondent no. 3 of the service certificate and the subsequent annexures nos. 7, 11, 12 and 13 in this writ petition which are the impugned orders of the respondent nos. 1 to 4, the letter dated 3/5/90 received on 28/5/90 through the Head Office.*
- b) *issue a writ, order or direction in the nature of mandamus directing the respondents to act according to law;*
- c) *issue any other writ, orders or direction as this Hon'ble court may deem fit and proper under the facts and circumstances of the case;*
- d) *award the cost of the petition to the petitioner.*

2. Briefly stated, applicant was enrolled in the Indian Army on 05.09.1973 and invalided out from service on 19.03.1978 in Low Medical Category. At the time of invalidation from service, the Medical Board (MB) held at Military Hospital, Aurangabad on 14.12.1977 assessed his disability '**RECURRENT SEIZURE**' @30% for one year and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 13/16 November 1978. The applicant preferred First Appeal which too was rejected vide letter dated 08.08.1979. It is in this

perspective that the applicant has preferred the present petition/application.

3. Although the applicant has not prayed any relief about the grant of disability pension, however, Learned Counsel for the applicant orally pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the Medical Board, hence as per Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) the applicant is not entitled to disability pension. He pleaded for dismissal of the Transferred Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also considered the oral submission of the Ld. Counsel for the applicant that atleast applicant should be granted disability pension. We have also gone through the records and we find that none of the parties have

submitted medical documents for perusal of the Bench. We also 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. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 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)."

7. In view of the settled position of law on attributability, we find that the respondents have denied attributability to the applicant only stating that since the disability of the applicant has been regarded as NANA, therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter.

The applicant was enrolled in Indian Army on 05.09.1973 and the disability has started after more than four years of Army service i.e. on 14.10.1977. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the applicant should be considered as aggravated by military service.

8. Although the period of disability was assessed for a period of one year by the Medical Board, but after the lapse of more than 44 years we do not feel it proper to refer the applicant's case for holding Re-Survey Medical Board, rather we are of the opinion that the disability should be treated for life. Further, the applicant is of very old person.

9. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

10. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War

Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:-

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

12. As such, in view of the decision of Hon'ble Supreme Court in the cases of **Union of India and Ors vs Ram Avtar & ors (Supra)** and **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that applicant is entitled for disability pension @30% for life from the next date of his invalidation to be rounded off to 50% for life with effect from 01.01.1996, the date from which the Policy is applicable. However,

the arrears should be restricted w.e.f. three years preceding the date application was received by this Tribunal by transfer.

13. In view of the above, the **Transferred Application No. 04 of 2019** deserves to be allowed, hence **allowed** for the grant of disability pension. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service for life. The applicant is entitled to get disability pension @30% for life from the next date of his invalidation which would be rounded off to 50% for life with effect from 01.01.1996. The respondents are directed to grant disability pension to the applicant @30% for life from the next date of his invalidation which would stand rounded off to 50% for life with effect from 01.01.1996. However, the arrears shall be restricted w.e.f. three years preceding the date application was received by this Tribunal by transfer. The date of receiving the application by this Tribunal by transfer is 01.04.2019. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.

14. No order as to costs.

(Lt. Gen. Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15 March, 2023

AKD/-