

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

ORIGINAL APPLICATION No. 1124 of 2023

Tuesday, this the 12th day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 8369163-P Sep/PO Ganesh Prasad Rana, S/o Yam Bahadur Rana, R/o Gali no 2, Aadarsh Colony, P.O.-Nakatia, Tehsil and District-Bareilly, U.P., presently residing at C/o Devgendra Chand, R/o Village Bhajanpur, P.O.-Chandani Banbassa, District-Champawat-262310, Uttarakhand.

..... Applicant

Ld. Counsel for the : **Shri Kishore Rai**, Advocate.
Applicant

Versus

1. Union of India, Ministry of Defence Through its Secretary, South Block, New Delhi-11000.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Addl Dte Gen Personnel Services, Adjutant General’s Branch, IHQ of MoD (Army), Room No-11, Plot No-108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. Senior Records Officer, Records Sena Dak Seva Abhilekh Karyalaya, APS Records, PIN-900476, C/o 56 APO.

.....Respondents

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

ORDER (Oral)

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

- (i) *A direction to quash the order dated 31.01.2023 passed by respondent No 4 (contained as Annexure No 3 to this original application) or to*
- (ii) *A direction to grant the disability element of disability pension to the applicant from the date of his retirement i.e. 18.11.2017 along with rounding off to the tune of 100%.*
- (iii) *To summon the entire records of the applicant pertaining to computation of his disability pension.*
- (iv) *Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated, applicant had voluntarily joined Army Postal Service Corps (APS Corps) on 07.06.1980 in the rank of Sepoy on deputation from Department of Posts and Telegraph. During the course of his service, he was posted to various field/peace stations all over India as per policy/instructions on the subject. The applicant was discharged from service on his own request and also on medical grounds w.e.f. 17.11.2017 (AN) on recommendation of Release Medical Board (RMB) held at 158 Base Hospital on 21.08.2017. The RMB assessed his disabilities (i) Stroke Lt Side Thalmoganglionic Bleed @ 95% for life (ii) Primary Hypertension @ 30% for life (iii) DM Type-II @ 20% for life and (iv) B/L Early Posterial Sub Capsular Cataract with Mild to Moderate NPDR Both Eye @ 15-19% for life and **composite disability @ 100%** for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of pension was rejected vide letter dated 31.01.2023. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of applicant's reporting on deputation in APS Corps, he was found mentally and physically fit for service in the APS and there is no note in the service documents that he was suffering from any disease/disability at the time of reporting on deputation to APS. The diseases of the applicant were contracted during the service, hence these are attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension and its rounding off to 100%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @ 100% for life have been regarded as NANA by the RMB, therefore, under Regulation 53 (a) of Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that whether the disabilities of the applicant are attributable to or aggravated by Military Service?

6. On perusal of record, we find that the applicant is suffering from four disabilities i.e. (i) Stroke Lt Side Thalmoganglionic Bleed, (ii) Primary Hypertension, (iii) DM Type-II and (iv) B/L Early Posterial Sub Capsular Cataract with Mild to Moderate NPDR Both Eyes from the

year 2015 to 2017 while in service. As per RMB, applicant's composite disabilities has been assessed to be 100% for life neither attributable to nor aggravated by military service.

7. 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)."

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disabilities (i) Stroke Lt Side Thalmoganglionic Bleed, (ii) Primary Hypertension, (iii) DM Type-II and (iv) B/L Early Posterial Sub Capsular Cataract with Mild to Moderate NPDR Both Eye are neither attributable to nor aggravated by military service on the ground of onset of disabilities between 2015 to 2017 while posted in peace locations, therefore, applicant is not entitled to disability element of pension. However, considering the facts and circumstances of the case, we are of the view that this reasoning of the Release Medical Board for denying disability element of pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant had joined the Army on deputation on 07.06.1980 and the disabilities had started after more than 35 years of Army service i.e. in the year 2015 onwards. 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** (supra), and the disabilities of the applicant should be considered as aggravated by military service.

9. In view of the above, the **Original Application No. 1124 of 2023** deserves to be allowed, hence **allowed**. The impugned order dated 31.01.2023 (Annexure A-3 to O.A.), rejecting the applicant's claim for grant of disability element of pension, is set aside. The disabilities of the applicant i.e. (i) Stroke Lt Side Thalmoganglionic Bleed, (ii) Primary Hypertension, (iii) DM Type-II and (iv) B/L Early Posterial Sub Capsular Cataract with Mild to Moderate NPDR Both Eyes of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @ 100% for life from the next date of his discharge i.e. w.e.f. 18.11.2017. The respondents are directed to grant disability element of pension to the applicant @ 100% for life w.e.f. 18.11.2017.

10. It may also be 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, in Para-9 the Hon'ble Apex Court has observed as under:-

“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 appellants 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.”

11. Since this O.A. was filed with delay and delay has been condoned by this Tribunal, as such, in view of the decision of the Hon'ble Supreme Court in the case of **Shiv Dass** (supra), we are of the considered view that benefit of disability element of pension may be made applicable to the applicant from three preceding years from the date of filing of the O.A.

12. In view of above, the O.A. succeeds and is hereby **allowed**. The respondents are directed to grant disability element of pension to the applicant @ 100% for life w.e.f. three preceding years from the date of filing of this O.A. This O.A. was filed on 18.09.2023. This order shall be complied with by the respondents within four months from the date of presentation of a certified copy of this order failing which the applicant shall be further entitled to interest at the rate of 8% per annum from the due date, till date of actual payment.

13. No order as to costs.

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

15. Ld. Counsel for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 12.03.2024
rathore

(Justice Anil Kumar)
Member (J)

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

(CIRCUIT BENCH AT NAINITAL)

(Supp No. 25)

O.A. No. 1124 of 2023

Sep/PO Ganesh Prasad Rana

Applicant**By Legal Practitioner for the Applicant :** Shri Kishore Rai, Advocate

Versus

Union of India & Others

Respondents**By Legal Practitioner for Respondents :** Shri Rajesh Sharma, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>12.03.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj. Gen. Sanjay Singh, Member (A)</u></p> <p>1. Heard Shri Kishore Rai, Ld. Counsel for the applicant and Shri Rajesh Sharma, Ld. Counsel for the respondents and perused the records the records.</p> <p>2. O.A. is allowed.</p> <p>3. For orders, see our judgment passed on separate sheets.</p> <p>(Maj. Gen. Sanjay Singh) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>