

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 862 of 2021**Friday, this the 13th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 4065949-M Ex LNK Ram Deo Pal
S/o Shri Gama Prasad Pal
R/o Village – Barakhet, Post – Surahe,
District – Ballia (UP) – 277504

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, Records, Defence Security Corps Records, Mill Road, Burnacherry Post – Kannur, Kerala-670013.
4. PCDA (P), Draupadi Ghat, Allahabad, Pin – 211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
Central Govt Counsel**ORDER (Oral)**

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) To issue/pass an order or direction setting-aside the rejection order dated Aug 2021 contained in Annexure No. A-1.

(b) To issue/pass an order or direction to the respondents to grant disability pension and benefits of rounding off to the applicant from the next date of discharge w.e.f. 31.07.2021.

(c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(d) Cost of the Original Application be awarded to the applicant.”

2. Counter affidavit filed by the respondents is taken on record.

3. Briefly stated facts of the case are that the applicant was enrolled in the Army on 05.09.1983 and was discharged from service on 30.06.2009 (AN) after rendering more than 26 years of service. The applicant was re-enrolled in DSC on 05.03.2011 and was invalided out from service on 31.07.2021 after rendering 10 years, 04 months and 26 days of service under the provisions of Rule 13 (3) (iii) (i) of Army Rules, 1954. The Release Medical Board (RMB) assessed his disabilities (i) **“PRIMARY OPEN ANGLE GLAUCOMA BOTH EYES WITH ADVANCED GLAUCOMATOUS OPTIC ATROPHY LEFT EYE”** and (ii) **“COMBINED BRANCHAL RETINAL ARTERY & VEIN OFFLUSION LEFT EYE”** @ 40% for life (composite) and opined the disabilities as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated nil Aug. 2021. No appeal against the rejection of disability pension claim was preferred by the applicant. It is in this perspective that the applicant has preferred the present O.A. for grant of disability pension.

4. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army (DSC) and there is no note in the service

documents that he was suffering from any disease at the time of enrolment. The disabilities of the applicant were contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, (2013) 7 SCC 316 and pleaded that applicant be granted disability pension @ 40% duly rounded off to 50% in view of ***Union of India vs. Ram Avtar***, decided on 10.12.2014 and Govt. of India letter dated 31.01.2001.

5. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. (i) **“PRIMARY OPEN ANGLE GLAUCOMA BOTH EYES WITH ADVANCED GLAUCOMATOUS OPTIC ATROPHY LEFT EYE”** and (ii) **“COMBINED BRANCHAL RETINAL ARTERY & VEIN OFFLUSION LEFT EYE”** have been assessed Composite @ 40% for life and considered both the disabilities as neither attributable to nor aggravated by military service and not connected with service with no undue physical or mental stress and strain of military service. Hence, as per Rule 53(a) of Pension Regulations for the Army, 2008 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

6. Heard 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. – are the disabilities of applicant attributable to or aggravated by military service?

7. 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 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/aggravation, we find that the RMB has denied

attributability/aggravation to applicant for the reason by declaring the diseases as NANA is that disabilities are not connected with service with no undue physical or mental stress and strain of military service. However, on further scrutiny, we have observed that disabilities were initially detected in the year 2020 after 9 years of service in DSC. We are, therefore, of the considered opinion that the reasons given in RMB for declaring both diseases as NANA is 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 as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disabilities should be considered as aggravated by military service.

9. In view of the above, applicant is held entitled to 40% disability element for life from the date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element from 40% to 50% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order is set aside. The disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 40% for life duly rounded off to 50% for life from the date of discharge from service. The respondents are directed to grant disability element @ 50% for life

from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

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