

Court No.1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 409 of 2017

Thursday, this the 23rd day of November, 2017

“Hon’ble Mr. Justice D.P. Singh, Member (J)
“Hon’ble Air Marshal BBP, Sinha, Member (A)”

Ex Sep/Clk Gajender Singh S/o Late Shri Munshi Lal, R/o Vill & PO
Upera, Distt Ghaziabad U.P.

..... **Applicant**

Ld. Counsel for the : **Shri K.K. Mishra, Advocate**
Applicant (Counsel for the Applicant)

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarter, New Delhi.
3. Army Services Corps, Records, (South) Bangalore.
4. PCDA (Pension) Allahabad.

...Respondents

Ld. Counsel for the: **Dr. Shesh Narain Pandey, Advocate,**
Respondents. Sr. Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa, OIC Legal Cell.**

ORDER

"Per Hon. Air Marshal BBP Sinha, Member (A)"

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for the relief of grant of disability pension with effect from the date of discharge from Army Service.

2. The facts of the case as are necessary for the adjudication of the present case are that the Applicant was enrolled in the Indian Army on 09.09.1976 and was invalidated out of service on the recommendation of Invalidating Medical Board on 12.12.1979. Before being invalidated out, the Invalidating Medical Board opined the applicant to be in low medical category on account of disability which was prescribed "ANXIETY NEUROSIS (300A). While recommending Applicant's case for discharge, the assessment of disability was opined to be nil and at the same time, it was opined to be neither attributable to nor aggravated by military service. Rather, it was said to be constitutional. The claim for disability pension was rejected by the PCDA (P) on the ground of it being neither attributable to nor aggravated by military service vide communication dated 14.03.1980. No appeal against the rejection order is said to have been preferred by the Applicant.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. The only ground cited by learned counsel for the respondents for denial of disability pension was that the disability of the Applicant was opined to be neither attributable to nor aggravated by military service. In this connection, he referred to Regulation 173 of Pension Regulations for the Army 1961 Part 1. He also argued that the Applicant is guilty of laches as he has approached this Court after efflux of 29 years.

5. Before proceeding further, it is worthy of notice that the delay was condoned vide order dated 15.09.2017 particularly so in the light of the fact that the applicant has a mental affliction. Thus the ground that the Applicant has invoked the jurisdiction of this Tribunal after elapse of 29 years does not merit consideration.

6. By catena of decisions of the Apex Court, the law on attributability and percentage of disability is very well settled and leaves no manner of doubt on both issues. In this connection, we would like to quote relevant paragraph of two the decisions of the Apex Court. The first case which we would refer to is **Dharamvir Singh Vs. Union of India and Ors**

reported in **(2013) 7 Supreme Court Cases 316**, rendered on 02.07.2013 in which Hon'ble 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. The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh** (CA No. 2904 of 2011 decided on 13.2.2015); **Union of India and others v. Manjit Singh** (CA No. 4357-58 of 2015 (arising out of SLP (C) No. 13732-33 of 2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011; **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; **Satwinder Singh v. Union of India** OA 621 of 2014 **Bharat Kumar Vs UOI & Ors.**; OA 1235 of 2014 **Hoshiar Singh Vs UOI & Ors.** and 480 of 2015 **Jasbir Singh Vs UOI & Ors. 18 and others** Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016.

8. The second case we would like to refer to it is Sukhvinder Singh Vs Union of India reported in (2014) STPL (WEF) 468 SC in which the Apex Court held that wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent and further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

9. In the instant case, the disability was admittedly assessed as 20% aggravated by military service and therefore in terms of the various decisions of the Apex Court including the aforesaid judgment, a disability leading to invaliding out of service is considered as attributable to military service and would attract the grant of fifty per cent disability pension after rounding off.

10. As a result of foregoing discussions, we allow the O.A. The Applicant is held entitled to disability pension to the extent of 20% for life which is rounded off to 50%. The Respondents are also directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum for three years prior to filing of the Original Application till the date of actual payment. The Respondents are further directed to give effect to the order within six months from the date of receipt of a certified copy of this order failing which the Petitioner shall be entitled to interest at the rate of 10% per annum.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: November, 2017

MH/-