

Reserved Judgment

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

Original Application No. 42 of 2017

Wednesday, this the 1st day of November, 2017

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex-Havildar Kundan Singh Bhandari
(Army No. 6323016-F) of Dehradun Sub Area,
Signal Company, Corps of Signals,
S/o Late Kunwar Singh Bhandari,
R/o Bhandari Niwas, Village & Post Office – Bhaniyawala,
Old Ghamandpur Road, Bhaniyawala,
District – Dehradun (Uttarakhand) – 248140

..... Applicant

By Legal Practitioner – Shri K.K. Singh Bisht, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence,
South Block, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry
of Defence (Army), South Block-III, New Delhi-110011.
3. Officer-in-Charge Records, Signal Records, Jabalpur PIN –
908770, C/o 56 APO
4. Principal Controller Defence Accounts (Pension), Draupadi
Ghat, Allahabad-211014.

..... Respondents

By Legal Practitioner – Shri Amit Sharma,
Learned Counsel for Central Govt.

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act whereby the applicant has sought the relief for grant of disability pension and its rounding off :-

“(a) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by PCDA (P), respondent No. 4 vide letter No. G-3/86/6319/V dated 22 August 1986 (Annexure No. A-1(i)) rejecting the disability pension claim of the applicant.

(b) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal rejection of Appeal by the Government of India, Ministry of Defense, New Delhi vide letter No. 7(1074)/86/D (Pen-A) dated 31 March 1987 (Annexure No. A-1(iii)) rejecting the disability pension claim of the applicant.

(c) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal rejection of Appeal by the Government of India, Ministry of Defence, New Delhi vide letter No. 6(66)/67/Defence (Pension Appeal Committee) dated 06 January 1988 (Annexure No. A-1 (iv)) rejecting the disability pension claim of the applicant.

(d) Issue/pass an order or direction of appropriate nature to the respondents to grant 30% disability pension which after rounding of will be 50% to the applicant from the date of discharge i.e. 01 July 1986.

(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 factual matrix of the case is that the applicant was enrolled in the Army on 24.06.1964 and was discharged from service on

30.06.1986 (afternoon) under Army Rule 13 (3) Item III (i) in low medical category CEE (Permanent) for the disease “**ESSENTIAL HYPERTENSION 401, V-67**”. Medical Board assessed his disability as 30% for two years and considered it aggravated by military service and connected with service. The disability pension claim of the applicant was forwarded to P.C.D.A. (Pension) Allahabad and it was rejected vide order dated 22.08.1986. The applicant preferred first and second appeals which were also rejected vide order dated 31.03.1987 and 06.01.1988 respectively. Aggrieved, the applicant has filed this Original Application. Delay in filing the Original Application has been condoned vide order dated 03.02.2017.

3. We have heard Shri K.K. Singh Bisht, learned counsel for the applicant and Shri Amit Sharma, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and was discharged in Low Medical Category, his disability should be considered as attributable to military service and he should be granted disability pension. He also submitted that as per Paragraph 173 of Pension Regulations 1961 (Part 1), pension may be granted to an individual who is invalided from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above. Learned counsel for the applicant submitted that since the Medical Board has considered his disability as 30% and aggravated by military service, as such, the

applicant is entitled for grant of disability pension. The disease has occurred to him due to stress and strain of the military service and it has been considered as aggravated by military service, as such, keeping in view the large number of judgments passed by the various Benches of Armed Forces Tribunal, he should be granted disability pension. While arguing the case, learned counsel for the applicant also submitted that disability pension @ 30% be rounded off to 50% in terms of policy letter dated 31.01.2001.

5. While filing counter affidavit, the respondents have not disputed that the applicant suffered disability to the extent of 30% for two years and that it was considered as aggravated by military service and connected with military service. Learned counsel for the respondents submitted that his claim for grant of disability pension was forwarded to PCDA (Pension) Allahabad, however, it was rejected by them and subsequently his both appeals were also rejected. Though initially, learned counsel for the respondents opposed but subsequently he conceded that in view of various judgments of Hon'ble Supreme Court and Armed Forces Tribunal, the applicant is entitled to grant of disability pension.

6. It is observed that applicant was enrolled in a medically fit condition and was discharged after more than 22 years of service in low medical category and medical board has considered the disability as aggravated by military service. As per para 173 of Pension Regulations 1961 (Part 1), pension may be granted to an individual who is invalided from service on account of disability, which is attributable to or aggravated by military service and

percentage of disablement is assessed as 20% or above. For convenience, the Para 173 of Pension Regulations is reproduced below :-

“Para 173. “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 a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”

7. If the medical board has opined that disease is aggravated by military service, then as per Para 173 of Pension Regulations, the applicant seems entitled to disability pension. It is apparent that PCDA (Pension) Allahabad has not taken the medical opinion into consideration and has changed the opinion without carrying out medical examination of the applicant and has also not given any valid reason for the change. We recall the judgment of **Ex. Sapper Mohinder Singh Vs. Union of India in Civil Appeal No. 164 of 1993, decided on 14.01.1993**, wherein it has been observed that pension sanctioning authority cannot sit over the opinion of the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Corps. The observation made in the judgment being relevant, is quoted below:-

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of

the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

8. We are of the view that case is squarely covered by the judgment of **Mohinder Singh** (supra). Also the fact is that the applicant was enrolled in medically fit condition and was discharged after 22 years of service in low medical category and medical board in their opinion at Page 3, Part III in the column 1 ‘**Did the disability exist before entering service**’ has mentioned ‘**NO**’. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service. The disability in these circumstances has to be considered as attributable to and aggravated by military service in terms of judgment of *Dharamvir Singh vs. Union of India and others*, reported in (2013)7 SCC 316, *Sukhvinder Singh vs. Union of India*, reported in (2014) 14 SCC 364, *Union of India and others vs. Angad Singh Titaria*, reported in (2015) 12 SCC 257 and *Union of India and others vs. Rajbir Singh*, reported in (2015) 12 SCC 264 and the applicant is considered entitled for grant of disability pension.

9. Since the medical board has assessed the disability as 30% for two years, as such keeping in view the judgment of *Veer Pal Singh vs Ministry of Defence, reported in (2013) 8 SCC 83*, we are of the opinion that the case of the applicant should be referred for Re-survey Medical Board to reassess further entitlement of disability pension, if any.

10. For the benefit of rounding off of disability pension, we are of the considered view that case of the applicant is squarely covered by the decision of Hon'ble The Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors, Civil Appeal No 418 of 2012 dated 10th December 2014** and he is considered eligible for the benefit of rounding off.

11. In view of the above the Original Application deserves to be allowed.

12. Accordingly the Original Application No. 42 of 2017 is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 30% for two years which would stand rounded off to 50% for two years. The respondents are also directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension, if any. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to

pay interest @ 9% on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

Dated: November, 2017
SB

(Justice S.V.S. Rathore)
Member (J)