

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 593 of 2017

Tuesday, this the 27th day of November 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 1044860K Ex Dfr Maharaj Ahmed Khan, S/O Sri Sultan Ahmed Khan, R/O Village & Post-Bugrasi, Distt-Buland Shahar (UP).

..... Applicant

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

Versus

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Records, Armoured Corps, Ahmed Nagar.
4. P.C.D.A. (Pension) Allahabad.

..... Respondents

Ld. Counsel for the :**Shri Rajiv Pandey**
Respondents Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. This Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *To direct the respondents to grant 20% disability pension to the applicant, wef 05 Oct 1986, that is from the date of his discharge from the service.*
- (b) *To direct the respondents to round off this disability pension to 50% as per the policy on the subject and thereafter pay arrears of pension with interest.*
- (c) *Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*
- (d) *Cost of the application be awarded to the applicant.*

2. Brief facts in nutshell are that the applicant was enrolled in Armoured Corps of the Indian Army on 18.12.1969 and in due course of time he was promoted to the rank of Dafadar (Dfr). The applicant was discharged from service after rendering 16 years, 09 months and 15 days of service at his own request on 03.10.1986 (AN) in low medical category under Rule 13 (3) III (v) read in conjunction with sub rule 2A of the Army Rules, 1954. Prior to discharge his Release Medical Board (RMB) was held at Military Hospital, Babina on 22.03.1986 which found the applicant to be suffering from ‘**Essential Hypertension**’ and assessed the applicant’s disability

@ 15-19% (less than 20%) for two years neither attributable to nor aggravated by military service (NANA). Claim for grant of disability pension preferred by the applicant was rejected by PCDA (P) Allahabad vide order dated 04.09.1986.

3. Ld. Counsel for the applicant drew our attention to Entitlement Rules for Casualty Pensionary Awards, 1982 which provides that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which took place at a later stage is entirely due to stress and strain of military service. The Ld. Counsel pleaded that in such circumstances the applicant is entitled to grant of disability pension. Relying upon the decision of Hon'ble Apex Court in the case of **Dharamvir Singh vs Union of India & Ors**, reported in (2013) 7 Supreme Court Cases 316, Ld. Counsel for the applicant pleaded that the applicant is entitled for grant of disability pension. He also pleaded for rounding off of disability pension to the extent of 50%. During hearing the Ld. Counsel for the applicant also submitted that since the applicant was in low medical category and not likely to get any extension

of service, therefore his discharge should be treated as INVALIDATION in terms of para 173A of Pension Regulations, 1961

4. On the other hand, Ld. Counsel for the respondents pleaded that as per para 173 of Pension Regulations for the Army, 1961 (Part-I) 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 and is assessed at 20% or above. In the case in hand, the applicant's disability was assessed at 15-19% (less than 20%) for two years and regarded as NANA by military service by the RMB, hence the applicant is not eligible for grant of disability element. He also contested the claim of Ld. Counsel for the applicant pleading for premature discharge of applicant to be treated as invalidation. He stated that it is clear case of premature discharge at applicant's own request and it is not a case that the applicant was denied extension of service. He pressed for O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. In this case we primarily have two questions which need to be answered. Firstly, is it a case of invalidation or discharge on own

request? Secondly, is the disability of the applicant attributable or aggravated by military service?

6. As far as the first question as to whether the applicant was invalided out or not, we have perused the records and heard the argument of both the sides, we are clear in our considered opinion that it is a case of premature discharge at own request. There is no evidence to substantiate that the respondents had denied extension of service on medical grounds. Coming to the second question as to whether the disability of the applicant i.e. 'Essential Hypertension' attributable to or aggravated by military service, we find that the reason given in counter affidavit, rejection letter of PCDA (P) and medical board indicates that the disability is not connected with service and not attributable to service. We also find that the disease had first started in December 1984 i.e. after 15 years of enrolment. Hence considering the law as defined by the Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India Ors*** reported in (2013) 7 Supreme Court Cases 316 we are of the considered opinion that the disease of the applicant is aggravated by military service.

7. However, since the applicant is a case of premature discharge at own request therefore as per the law settled

on this matter his eligibility for disability pension, if any, can only commence after 01.01.1996 and not from his date of discharge.

8. Considering the fact that the disease of the applicant has been opined as aggravated and RMB of the applicant was temporary and valid only for two years after discharge, and also catering for the fact that hypertension is a progressive disease, we, therefore, consider it fit in the interest of substantive justice that the respondents should carry out a fresh RSMB of the applicant.

9. In view of the above and considering that 'Essential Hypertension' is a progressive disease, the respondents are directed to carry out a fresh Re-survey Medical Board of the applicant for re-assessing the present medical condition. Future entitlement of disability element shall be subject to the outcome of RSMB. The complete exercise shall be completed within a period of three months from the date of this order.

10. O.A. No 593 of 2017 is disposed off accordingly.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : November, 2018
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