

RESERVED
Court No.1

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

Original Application No. 133 of 2017

Monday, this the 08th day of October 2018

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

Hari Shankar Singh Chauhan (JC-270729X Ex Subedar),
S/O Late Markandey Chauhan, R/O Village & Post-
Khanpur, Teh-Saidpur, District-Ghazipur (UP), PIN-
233223.

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
3. The Officer-in-Charge, Artillery Records, PIN-908802.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**
Central Govt Counsel.

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

1. The instant 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) *The Hon’ble Tribunal may be pleased to set aside the orders dated 05.11.2012 (Annexure No 1), 17.07.2013 (Annexure No A-2) and 10.12.2014 (Annexure No A-3).*
- (b) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.07.2012 along with its arrears and interest thereon at the rate of 18% per annum.*
- (c) *Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature of circumstances of the case including cost of the litigation.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army in Regiment of Artillery on 25.09.1984 and discharged from service on 30.06.2012 in low medical category S1H1A1P2(Permt)E1 for ID-NIDDM under Rule 13 (3) I (i) (a) of Army Rules, 1954. Prior to discharge the applicant was brought before the duly constituted Release Medical Board (RMB) held at 181 Military Hospital on 30.12.2011. The RMB assessed applicant’s disability as neither attributable to nor aggravated by military service (NANA) and the degree of disability was assessed as nil for life. Claim for grant of disability pension was rejected and communicated to the

applicant vide letter dated 05.11.2012. First appeal of the applicant was turned down by the respondents on the ground of disability having originated while serving in a peace area. Thereafter the second appeal was also rejected on the same ground. Since the RMB had not specified the percentage of disability therefore an RSMB was conducted by the respondents on the orders of this Tribunal. The RSMB dated 06.05.2018 has assessed the disability of the applicant @ 20% and neither attributable to nor aggravated by military service (NANA).

3. Ld. Counsel for the applicant submitted that the disease took place in the year 2000-2003 while the applicant was posted in J&K Fd/HAA. It escalated gradually by the passage of time but was detected first time while he was posted at Mathura in August 2004. Ld. Counsel further pleaded that the applicant was granted 30% disablement vide Medical Board held on 11.04.2009 (**Annexure No A-8 to the O.A.**) which remained intact upto 09.03.2011 (**Annexure No A-9 to the O.A.**) but the RMB held on 30.12.2011 viewed applicant's disability as neither attributable to nor aggravated by military service and degree of disablement was assessed at Nil for life. He placed reliance on the Hon'ble Apex Court judgment in the case of **Dharamvir Singh vs Union of India & Ors**, (2013) AIR SCW 4236

and ***Union of India and Ors vs Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 dated 10th December 2014) and pleaded that the case is squarely covered under above judgments and thus the applicant is entitled for grant of disability pension.

4. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disability as NANA. In addition, the competent authority had rejected claim of disability pension in view of Govt of India, Ministry of Defence letter dated 01.09.2005 amended vide letter dated 31.05.2006 and Integrated Headquarters of MoD (Army) letter dated 20.07.2006 and upheld the decision of RMB. The ground of rejection of first and second appeals is primarily related to RMB declaring the disease as NANA on grounds of the onset of the disease being at a peace station and not related to a field or high altitude or counter insurgency operations area.

5. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the Release Medical Board (RMB), Review Medical Board (RSMB) and the rejection orders of first and second appeals. The question before us is simple and straight

forward i.e. – is the disability of applicant attributable to or aggravated by military service?

6. 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*** 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)."

7. In view of the settled position of law on attributability we find that the Medical Board has denied attributability to the applicant on the ground that the onset of disease after 24 years of service was at a peace station and not at a field or high altitude or counter insurgency related station. We have also noted that the disease was first reported in August 2004 and the applicant was in field area/high altitude area in J&K between 2000 to 2003. We therefore are of considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316 and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above the applicant is held entitled to 20% disablement for life which will stand rounded off to 50% disablement for life in terms of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders dated 05.11.2012 (**Annexure No A-1 to the O.A.**), 17.07.2013 (**Annexure No A-2 to the O.A.**) and 10.12.2014 (**Annexure No A-3 to the O.A.**) are set aside. The applicant shall be entitled to disability element @ 50% for life w.e.f. three years prior to the date of filing of the present application. The date of filing of present application is 03.10.2017. The respondents are 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : October, 2018
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