

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

ORIGINAL APPLICATION No. 244 of 2021

Friday, this the 01st Day of October 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 14477034-X, Ex- Hav, Rank Narendra Singh, Ex-Hav, R/o
Vill- Kharagpur, Po- Meh Nagar, Dist: Azamgarh-271204.

..... Applicant

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate**
Applicant

Versus

1. The Union of India through Secretary, Ministry of Defence, New Delhi.
2. Addl. Dte of Personal Service, Adjutant General's Branch, Integrated Head Quarters, Ministry of Defence (Army), L-1 Block, Church Road, New Delhi-01.
3. Officer in Charge, Artillery Records, Nasik Road Camp-422102. APS PIN -908802
4. The Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP).

.....Respondents

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

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) *To set aside order dated 20.07.2006 and 07.02.2008 (Anx-1&2).*

(b) *To grant Disability Pension @20% for 5 years w.e.f. 01.04.2006 and round of the same to 50% giving the benefit of Gol MoD Letter dated 31.01.2001 and pay arrears of Disability Pension with 12% interest w.e.f. 01.04.2006 till it is actually paid.*

(c) *To conduct RSMB to assess condition of applicant for further grant of Disability Pension*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 16.03.1982 and discharged from service 01.04.2006 in Low medical Category on fulfilling the conditions of enrolment. The Release Medical Board (RMB) held at Military Hospital, Jhansi on 19.10.2005 assessed his disability “**SCHIZOPHRENIA**” @ 20% for five years and opined the disability as neither attributable to nor aggravated by military service. The applicant was granted service pension for his service rendered in the army. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 20.07.2006 being neither

attributable to nor aggravated by military service. Applicant made various correspondences for the grant of disability pension, but the same were also rejected by the respondents. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he was retired from service in Low Medical Category assessed as 20% for five years. His disability was first time assessed in the year 2005 after about 23 years of service. Learned counsel for the applicant submitted that disability of the applicant be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 20% for 5 years, but he submitted that competent authority while rejecting the claim of the applicant has viewed that disability was found as neither attributable to nor aggravated by military service, therefore, in terms of Para 173 of the Pension Regulations for

the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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. After considering all issues we have noted that the only reason given by RMB for denying Attributability for disease is that it is not connected with military service. We find that when the applicant joined the Army, he was medically examined and found to be in Shape-I and the aforesaid disability was contracted after about 23 years of service which resulted in the downgrading of his medical category. 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 and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service. We also converge to the view that, in view of law laid down by Hon'ble the Apex Court in the case of **Veer Pal Singh**, in the interest of justice, the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

9. On the issue of rounding off of disability pension, we are of the considered view that the case of the applicant is 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**). Accordingly, we feel that the applicant is entitled to the benefit of rounding off.

10. Keeping in view the discussions, made hereinabove, we are of the opinion that the instant Original Application deserves to be allowed. The applicant is entitled to 20% disability pension for 05 years which needs to be rounded off to 50%.

11. In the result, the **Original Application** is allowed and the impugned orders passed by the respondents rejecting the

claim for grant of disability pension are set aside. The respondents are directed to grant 20% disability pension for 05 years from the date of retirement which would stand rounded off to 50%. We also direct the respondents that the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. Respondents are also directed to give effect to the order within 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 @ 8% on the amount accrued from due date till the date of actual payment

12. No order as to costs.

13. Pending applications, if any, are disposed off.

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

Dated : 01 October, 2021

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