

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 56 of 2019**Friday, this the 08th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 1479488K Ex. Spr. Bharat Chandra Biswas, Son of Late Phani Bhushan Biswas, Care Jagannath Paswan, Son of Nosehas Paswan, 1/1, Gokhale Marg, Lucknow-226001.

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate.
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence, New Delhi.
2. Second Appellate Committee on Pension (SACP), Additional Director General of Personal Services 4 (Imp-II0 Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army0, Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110011.
3. Commandant cum Chief Records Officer, Bengal Engineering Group Centre and Records, Roorkee.
4. Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad.

.....**Respondents**Ld. Counsel for the : **Shri Yogesh Kesarwani**, Advocate
Respondents. 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 quash the rejection of the Second Appellate Committee on Pensions rejecting the second appeal of the applicant bearing no. Pen/D-1479488/\$ dated 18 Dec 2017 with all consequential benefits to applicant.*
- (b) *To quash the rejection order of the first Appellate Committee on Pension rejecting the first appeal of the applicant bearing no. Pen/D-1479878/R dated 05 May 2016 with all the consequential benefits to the applicant.*
- (c) *To quash the rejection order of the Principal Controller of Defence Accounts (Pensions) Allahabad order rejecting the claim of the applicant with all the consequential benefits to applicant.*
- (d) *To grant the benefits of the rounding off (broad banding) as catered for in the Government of India, Ministry of Defence, new Delhi policy letter No. 1(2)/97/I/D(Pen-C) dated 31 Jan 2001 with all the consequential benefits to the applicant.*
- (e) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (f) *Award cost of the petition.*
- (g)(i) *To grant disability pension to the applicant as assessed by the Medical Board held in November, 1989 at Military Hospital, Nasirabad for two years assessed @40% for two years with all the consequential benefits to the applicant.*
- (g)(ii) *The respondents to conduct Re Survey Medical Board of the applicant to assess the present medical condition/status of the applicant, and to grant disability pension at the percentage which the Re Survey Medical Board held shall record in the Re Survey*

Medical Board, with all the consequential benefits to the applicant.

2. Briefly stated, applicant was enrolled in Indian Army on 20.03.1986 and was invalided out from service on 19.12.1989 in Low Medical Category EEE (Permanent) before completion of terms of engagement under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Nasirabad (Rajasthan) on 15.11.1989 assessed his disability '**HAEMOPHILIA 289**' @ 40% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability pension was rejected vide letter dated 07.01.1991. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 05.05.2016 and 18.12.2017 respectively. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears

thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**HAEMOPHILIA 289**' has been regarded as 40% for two years by IMB. However, since the disability was opined by IMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was not granted. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, 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)].
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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 IMB has denied attributability to the applicant only by endorsing that the disability '**HAEMOPHILIA 289**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The applicant was enrolled in Indian Army on 20.03.1986 and the disability has started after more than three years of Military service i.e. on 17.04.1989. We are therefore of the considered opinion that the reasons given in IMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for two years from the next date of his discharge.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 19.12.1989.

9. Since the applicant's IMB was valid for two years w.e.f. 19.12.1989, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

10. In view of the above, the **Original Application No.56 of 2019** deserves to be allowed, hence, **allowed**. The impugned orders rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @40% for two years from the next date of his discharge. The respondents are directed to grant disability pension @40% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08 October, 2021

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