

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

TRANSFERRED APPLICATION No. 11 of 2018

Monday, this the 25th October, 2021

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

Shatrughan Kumar Pande, son of Sri Pundrik Prasad Pande,
resident of village and post-Samrauta, District-Raebareli.

..... Petitioner

Ld. Counsel for the : **Shri Virat Anand Singh**, Advocate
Petitioner

Versus

1. Union of India, through Secretary, Ministry of Defence,
New Delhi.
2. The Chief of the Army Staff, Army Head Quarters, New
Delhi.
3. Record Officer, OIC Electrical and Mechanical Engineering
Records, Secunderabad, Andhra Pradesh.

..... Respondents

Ld. Counsel for the **Shri Amit Jaiswal**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

1. This petition was initially filed in the Hon'ble High Court of Judicature at Allahabad as Writ Petition No 8095 (S/S) in the year 1993 which was transferred to this Tribunal on 10.08.2018 under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 11 of 2018. The petitioner has prayed for following:-

(i) to issue a writ, order or command in the nature of mandamus commanding the opposite parties to release the pension and other pensionary benefits to the petitioner forthwith, with an interim mandamus to release at least pension immediately.

(ii) to issue any other writ or order deemed proper.

(iii) Matter is urgent. Notice may be waived of.

2. Brief facts of the case are that petitioner was enrolled in the Army on 30.04.1974 and was promoted to the rank of Naik in the year 1987. Petitioner was detected to be suffering from disability 'Peripheral Vascular Disease Lt Lower Limb V-67' on 30.05.1979. Petitioner was discharged from service w.e.f. 30.11.1990 (AN) and prior to discharge his RMB was conducted on 02.05.1990 which assessed his aforesaid disability @ 40% for five years neither attributable to nor aggravated by military service (NANA). On 09.01.1993 petitioner submitted a representation (Annexure-I) for release of his service pension as well as disability pension, reply of which was received on 17.04.1993 (Annexure-II) stating therein that his case for release of pension was under consideration. Later, Records intimated on 31.05.1993 (Annexure-III) that petitioner's final

statement of account has not been finalised. In the year 1994, he was granted service pension vide PPO No S/294/1994 dated 10.02.1994 and his claim for disability pension was rejected vide order dated 09.03.1994. Petitioner did not prefer any appeal against rejection of disability pension as his writ petition was already pending in the Hon'ble High Court for grant of service pension and disability pension. This petition was filed for grant of service pension and disability pension, and since service pension has already been granted vide aforesaid PPO, therefore we need to adjudicate the issue with regard to grant of disability pension.

3. Ld. Counsel for the petitioner submitted that the petitioner was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by the petitioner after joining the service should be considered as attributable to or aggravated by military service and the petitioner should be entitled to disability pension. Ld. Counsel for the petitioner further submitted that disability pension claim of the petitioner was rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the petitioner is that since the aforesaid disease was due to stress and strain related rigors of military service, it should be either

attributable to or aggravated by military service and petitioner should be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that since RMB has declared the petitioner's disability as NANA, he is not entitled to disability element of pension. Respondents' learned counsel further submitted that the competent authority had rightly rejected the claim of petitioner's disability element of pension on the ground of disability not related to military service. He pleaded for dismissal of T.A.

5. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e.-is the disability of petitioner 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***, (2013) 7 SCC 213. 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 proposition of law on attributability/aggravation, we find that the RMB has denied

attributability/aggravation to the petitioner only by endorsing a cryptic sentence in the proceedings i.e. 'it is a constitutional disability, not related to service'. We feel that such an arbitrary statement is not the absolute truth when he was enrolled in medically fit condition on 30.04.1974 and the disability in question was detected after he had rendered five years service. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently, and, unless proved to the contrary to be a consequence of military service. The benefit of doubt therefore, shall be rightly extended in favour of the petitioner. In the instant case, since the petitioner was found to be suffering from disability when he had put in more than 05 years of service, it should be deemed to be aggravated by military service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the petitioner as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the petitioner should be considered as aggravated by military service.

8. In view of the above the petitioner is held entitled to 40% disability element for five years from the date of his discharge from service.

9. As a result of foregoing discussion, the T.A. is **partly allowed**. The impugned order dated 09.03.1994 is set aside. The disability of the petitioner is to be considered as

aggravated by military service and petitioner is entitled to disability element @ 40% for five years. Petitioner is not entitled to rounding off of disability element as he was discharged from service in the year 1990 when rounding off facility was not in existence. The respondents are directed to hold petitioner's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB. Default will invite interest @ 8% p.a.

10. No order as to costs.

11. Pending applications, if any, stand disposed off.

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

Dated: 25.10.2021
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