

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 545 of 2022**

Monday, this the 31st day of October, 2022

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

No. 128566Y, PO ELR Pankaj Kumar Mishra
S/o Devendra Mishra
R/o C/o Shri Harmun Mishra
Rajpur, Bagaha Pipra Ghat, Mustkil,
Kushinagar (UP) – 274406

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence (Navy), New Delhi-110011.
2. Chief of the Naval Staff (For principal Director of Pay and Allowance, Integrated Headquarters Ministry of Defence (Navy), D-II Wing, Sena Bhawan, New Delhi-110011.
3. The Commodore, Bureau of Sailors, Sion-Trombay Road, Mankhurd, Mumbai – 400088.
4. Naval Pension Office, C/o INS Tanaji, Sion-Trombay Road, Mankhurd, Mumbai – 400088
5. Directorate of Pay and Allowance IHQ of MoD (Navy), Room No. 108, NHQ annexe, Talkatora Stadium, New Delhi - 110001.

..... Respondents

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

ORDER (Oral)

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

“A. To issue/pass an order to set aside quash the letter/order No. PEN/600/D/LRDO I:01/2016/128566Y dated 31 January 2016 passed by respondent no. 4 and order/letter no. PN/0134/DP/1210/21 dated 16 June 2022 passed by respondent no. 5, which are being annexed as Annexure No. 1 and 2 to this Original Application.

B. To issue/pass an order or directions to the respondents to grant disability element of disability pension @ 52% from date of SOS i.e. 01.02.2016 (Date of release 31.01.2016) along with @ 12% on arrear in light of Hon'ble Apex Court.

C. To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension to the tune of @ 75% from date of SOS i.e. 01.02.2016 (Date of Release 31.01.2016) along with interest @ 12% on arrear in light of Hon'ble Apex Court.

D. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.”

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Navy on 30.01.2001 and was discharged from service on

31.03.2016 (AN) in low medical category after rendering 15 years and 02 days of service. The Release Medical Board (RMB) assessed his disabilities (i) “**SEIZURE DISORDER ICD No. 40.4**” @ 40% for life and (ii) “**MIGRAINE ICD No. 43.9**” @ 20% for life and composite assessment for both the IDs @ 52% for life and opined the disabilities as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 31.01.2016. The first appeal of the applicant was rejected by the respondents vide order dated 16.06.2022. It is in this perspective that the applicant has preferred the present O.A.

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 Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The diseases of the applicant were contracted during the service, hence it is attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh vs. Union of India & Ors**, (2013) 7 SCC 316 and **Sukhvinder Singh vs. Union of India & Ors** (2014 STPL (WEB) 468 SC and pleaded that applicant be granted disability element of disability pension @ 52% duly rounded off to 75% for life

in view of Hon'ble Apex Court judgment dated 10.12.2014 in the case of ***Union of India vs. Ram Avtar.***

4. Though, no counter affidavit has been filed by the respondents in the case, however, during the course of hearing, learned counsel for the respondents contended that both the disabilities of the applicant could not be detected at the time of enrolment being a kind of mental disorder and due to late manifestation, both the disabilities originated in 2013. The disabilities of the applicant i.e. (i) "**SEIZURE DISORDER ICD No. 40.4**" and (ii) "**MIGRAINE ICD No. 43.9**" have been assessed composite @ 52% for life by RMB as neither attributable to nor aggravated by military service and onset is in peace area and not connected with service. Hence, as per Regulation 100 of Navy Pension Regulations, 1964, applicant is not entitled for disability element of disability pension. He pleaded for dismissal of the O.A.

5. Heard learned 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. – are the disabilities 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***, (2013) 7 SCC 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/aggravation, we find that the RMB has denied attributability/aggravation to applicant for the reason by declaring the disabilities as NANA is that both disabilities have originated in peace area and have no close time association with Fd/HAA/CI Ops service. However, on further scrutiny, we have observed that disabilities were initially detected in the year 2013 after 12 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disabilities as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disabilities should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 52% disability element for life from the date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element from 52% to 75% for life in terms of the decision of Hon'ble Supreme

Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 52% for life duly rounded off to 75% for life from the next date of discharge from service. The respondents are directed to grant disability element @ 75% for life from the next date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 07.07.2022. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: October, 2022

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