

RESERVED
Court No. 1

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

Original Application No. 103 of 2019

Monday, this the 30th day of September, 2019

Hon'ble Mr. Justice Virender Singh, Chairperson
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 3001674M Ex- L/Nk Ajeet Singh
Son of Shri Ram Dev Singh
Residence of Krishana Nagaria
Near Baba Mandir
Post Chauhan Thok
District – Hardoi – 241001.

.....Applicant

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

Versus

1. Union of India, through Secretary,
Ministry of Defence (Army)
South Block, New Delhi.
2. Chief of the Army Staff,
IHQ MOD (Army), Army HQ,
South Block,
New Delhi-110010.
3. The Officer-in-charge Records,
Record office, Rajput Regiment
Pin – 900427, C/o 56 APO.
4. PCDA (Pension),
Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

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. To issue/pass an order or directions to set aside/quash the rejection of First Appeal/representation dated 12.10.2018 and order dated 27.04.2016, which is attached as Annexure No. 1 and 2 respectively.*
- B. To issue/pass an order or directions to the respondents for grant of disability element of disability pension from date of Discharge i.e. 30.04.2016.*
- C. To issue/pass an order or directions to the respondent for grant of disability element of disability pension of the applicant @ 20% to 50% alongwith 12% interest of the arrear from the date of discharge i.e. 30.04.2016.*
- 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.*
- E. To allow this original application with costs.”*

2. In brief, the facts of the case are that the applicant was enrolled in the Indian Army on 15.10.2000 in medically fit condition and discharged from service on 30.04.2016 in low medical category after serving 15 years and 6 months of service. The Release Medical Board held before his discharge, considered the disease “OTOSCLEROSIS (RT)-EAR (OPTD)” as neither attributable to nor aggravated by military service and assessed it 20% for life. The claim of the applicant for grant of disability pension was rejected by the competent authority vide order dated 27.04.2016. Thereafter, the applicant filed his first appeal which was also rejected by the competent authority

vide order dated 12.10.2018. Aggrieved by the denial of disability pension, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has been discharged from service in Low Medical Category and his disability 'OTOSCLEROSIS (RT)-EAR (OPTD)' has been assessed @ 20% for life and considered as neither attributable to nor aggravated by military service. Ld. Counsel further submitted that as per extant rules and regulations on the subject, the applicant is entitled to grant of disability pension as the disability took place while in service and it shall be presumed to be attributable to and aggravated by Army Service. The Ld. Counsel for the applicant has relied upon Hon'ble Apex Court judgment in the case of *Dharamvir Singh vs Union of India & Ors*, (2013) 7 Supreme Court Cases 316 and *Sukhwinder Singh vs Union of India & Ors*, (2014) 4 SCT 163 (SC) and pleaded that the applicant is entitled to disability pension.

4. Learned counsel for the applicant also placed reliance on the Rule 14 (b) of Entitlement Rules for Casualty Pensionary Awards, 1982 and Regulations 423 (c) of the Regulations for the Medical Services for Armed Forces 1983 and submitted that the applicant is entitled for disability pension, if the disability occurred during service and it has been assessed above 20%. Hence, the applicant should be granted disability pension @ 20% for life for his disease "OTOSCLEROSIS (RT)-EAR (OPTD)" which should be rounded off to 50% for life in terms of Government letter dated 31.01.2001.

5. Learned counsel for the respondents submitted that competent authority while rejecting the claim of the applicant has viewed that disease of the applicant is 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 grant of disability pension has correctly been rejected.

6. In this case though the counter affidavit has not been filed by the respondents, but they have submitted copies of relevant Medical Board proceedings, hence, with the consent of learned counsel for both the parties, we proceed to hear the case.

7. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

8. We have gone through the medical literature and tried to understand this disease 'OTOSCLEROSIS'. In simple language this disease is about an abnormal growth of bone near the middle ear resulting in hearing loss. This growth adversely affects the vibration of the bone in the ear and this results in hearing loss. The disease is common in young Adults and tends to run in families. There is no evidence to suggest that stress and strain of military service can trigger this disease by causing extra growth in the middle ear.

9. Considering the above mentioned scenario, we agree with the opinion of the RMB that the disease as per 'Guide to Medical Officers' is not connected with military service. We are also of the

opinion that the Hon'ble Apex Court judgment of *Dharamvir Singh vs. Union of India & Ors* (supra) doesn't help the applicant because this disease manifest in young Adults i.e. in their twenties & thirties and is not likely to be detected in late teenage when recruits are enrolled. In this particular case, the disease has manifested 06 years after enrollment as a recruit. We have also noted that in this particular case, the applicant has been given sheltered appointment and discharged after qualifying for service pension.

10. In view of the above, the applicant has failed to make out a case for himself, hence, the O.A. is liable to be dismissed and is **dismissed**.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: September, 2019

SB

(Justice Virender Singh)
Chairperson