

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 126 of 2019**Monday, this the 30<sup>th</sup> day of September, 2019**“Hon’ble Mr. Justice Virender Singh, Chairperson**  
**“Hon’ble Air Marshal BBP Sinha, Member (A)”**

Raj Narain Tiwari (JC 803827 H Ex Sub), son of late Sri Gopi, resident of village Arahariya Mou, post office Arahariya Mou, Tehsil Pukhrayan, District Kanpur Dehat, Uttar Pradesh – 209312.

..... Applicant

Counsel for the : **Shri Yashpal Singh, Advocate**  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General of Personnel Services PS-4 (Imp-II), Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), PIN- 900256, C/O 56 APO.
3. Officer- in-Charge Records, Army Education Corps PIN- 908777, C/O- 56 APO.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

.....Respondents

Counsel for the : **Shri R.K.S. Chauhan, Advocate**  
Respondents. Addl. Central Govt. Standing Counsel**ORDER****Per Hon’ble Air Marshal BBP Sinha, Member (A)**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the grant of disability pension with the following prayers:

(a). Issue/ pass an order or direction setting aside rejection of the claim of the applicant for disability pension as communicated by the letter dated 06.02.2016 (Annexure No.1 to the Original Application) after summoning the relevant original records.

(b). Issuing/ passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears with interest; and also the benefit of rounding off and other consequential benefits of ex-serviceman.

(c). issuing/ passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d). allowing this Application with cost.

2. As per office report there was delay of 01 year, 11 months and 04 days in filing the O.A. but after hearing learned counsel for the parties the O.A. was admitted for hearing vide order dated 27.02.2019.

3. The brief facts of the case as borne out from the record are that applicant was enrolled in Indian Army in Education Corps on 25.04.1987 and discharged from service on 31.01.2016 on completion of 28 years, 09 months and 06 days of service in low medical category. Release Medical Board (RMB) held at the time of discharge, found the applicant suffering with disability **“IDIOPATHIC INTRACRANIAL HYPERTENSION”**, which was assessed at 20% for life. However, the disability was considered neither attributable to nor aggravated by military service. The rejection order of disability pension claim of the applicant was communicated to him vide letter dated 06.02.2016. Feeling aggrieved applicant preferred first appeal but according to the applicant till today he has not been informed of the decision taken upon the same. It is in this perspective that the applicant has preferred the present O.A.

4. The respondents have not filed any counter affidavit in this matter but during the course of hearing learned counsel for the respondents has produced a copy of RMB proceedings for perusal of the Tribunal. In the circumstances since relevant papers pertaining to RSMB of the applicant are before us, no useful purpose would be served in keeping the O.A. pending. Hence, with the consent of learned counsel for the parties, we proceed to dispose of this O.A. finally without calling for counter affidavit from the respondents.

5. The submission of learned counsel for the applicant is that the applicant was fully fit at the time of enrolment and he has picked up the diseases due to stress and strain of service. He pleaded that his disabilities should be considered as attributable to and aggravated by military service and disability pension should be granted to the applicant in consonance with the provisions of Regulation 423 of the Pension Regulations for the Army. He drew our attention to page- 5 of the RMB, brought before us during the course of hearing by learned counsel for the respondents, endorsing with the following remarks:-

- “2. Did the disability exist before entering service? (Y/N/Could be –No.*
- 3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry ? – No.*
- 5.(a) Was the disability attributable to the individual’s own negligence or misconduct ?  
If so, in what way and to what percentage of the total disablement ? - No.”*

6. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the Release Medical Board (RMB) has opined that the disease suffered by the applicant is neither

attributable to nor aggravated by military service, as such, the applicant has rightly been denied disability pension. Moreover the applicant was discharged from service on attaining the prescribed superannuation age in terms of his engagement. He pleaded for the O.A. to be dismissed.

7. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

8. In the case in hand, the Release Medical Board has assessed disability of the applicant as 20% for life and declared it NANA. However, we find that there is a crisp and one liner justification given by RMB i.e. 'not connected with service'. This crisp sentence does not appear to be convincing or rational. Additionally we have tried to understand this disease. Medical literature on this disease is not very clear on the exact causes and triggers for this disease. Thus considering all issues we are inclined to give the benefit of doubt to the applicant. Therefore, in terms of judgments of Hon'ble Apex Court in the case of ***Dharamvir Singh Vs. Union of India and Others***, (2013) 7 SCC 316, we are of the considered opinion that disability in question has been aggravated by military service.

9. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of ***K.J.S. Buttar vs Union of India and ors***, (2011) 11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No. 5591/2006, ***Union of India & anr vs. K.J.S. Butter and Union of India vs. Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 decided on 10th December, 2014). Although the applicant has not made any

specific prayer for rounding off of his disability pension in the petition but in the interest of justice taking a uniform view as the same is being granted in other cases, we would like to grant the benefit of rounding off of disability pension to the applicant also.

10. Accordingly, O.A. No. 126 of 2019 is **allowed**. The disability of applicant for “**IDIOPATHIC INTRACRANIAL HYPERTENSION**”, @ 20% for life is considered to be aggravated by military service. The respondents are directed to grant disability element to the applicant @ 20% for life rounded off to 50% for life w.e.f. the date of discharge. The discharge of the applicant is w.e.f. 01.02.2016. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the applicant shall also be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice Virender Singh)**  
**Chairperson**

Dated : September ,2019  
JPT/AKD