

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 180 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)Ex Havildar Akhilesh Kumar Singh (No-6934958P)
Son of Shri Man Bahadur Singh,
Resident of village-Bhorakalan,
Post Office-Keowli, Tehsil-Mohan Lal Ganj,
Distt-Lucknow (UP), PIN-227303.

....Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh**
Applicant Advocate.

Verses

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.
4. Officer-in-Charge, Army Ordnance Records, PIN-900453, C/O 56 APO.

.....Respondents

Ld. Counsel for the :**Shri Virendra Singh**, Advocate
Respondents. Central Govt Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

“(i) Issue/pass an order or direction to the respondents to quash/set-aside the rejection orders vide AOC Records letters dated 07.09.2017 (Annexure No A-1) being illegal, arbitrary and without application of mind.

(ii) Issue/pass an order or direction to the respondents to quash/set-aside Pension Payment Order (PPO) No S/26540/2017 (Army) dated 01.09.2017 (Annexure No A-3) being issued without entitled disability pension of the applicant.

(iii) Issue/pass an order or direction of appropriate nature to the respondents to grant the entitled to the extent of 50% and the same be ‘rounded off’ to 75% disability pension to the applicant from 01.09.2017 for life to the applicant, as a matter of right as provided by Govt of India letter No 1 (2)/97/D (Pen-C) dated 31 Jan 2001 (Annexure No A-7) supported by the position held by the Supreme Court.

(iv) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(v) Allow this application with costs.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 26.08.1993 and was discharged from service on 31.08.2017 (AN) in Low Medical Category S2H1A1P1E1 (Permanent). At the time of retirement from service the Medical Board assessed his disability ‘Hypochondriacal Disorder’ @ 40% for life but opined the disabilities to be neither attributable to nor aggravated by military service (NANA). The initial claim of disability pension was rejected vide order dated

07.09.2017. First Appeal of the applicant preferred vide letter dated 22.11.2017 seems to be pending. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that at the time of enrolment, the applicant was found medically and physically fit for service in the Army and there was no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Army Services. The Ld. Counsel for the applicant 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 also 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 has been regarded as NANA by the Release Medical Board (RMB) hence the applicant is not entitled to disability pension. Further submission of Ld. Counsel for the respondents is that in the instant case since the disease took place while the applicant was serving in peace station, hence the

disease has been conceded as NANA in terms of Para 54 of Chapter VI of GMO (MP)-2008. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the medical board proceedings as well rejection order of first appeal. The only question which needs to be answered is as to "Whether the disability of the applicant is attributable to or aggravated by military services"?

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)]. [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. **HYPOCHONDRIACAL** disease as suffered by the applicant is a psychological disorder. Basically this disease is related to "obsession with the idea of having a serious but undiagnosed medical condition". When we look at the RMB and specialist opinion, following details are clear to us :-

(a) That the onset of disease was in 2013 i.e. after 20 years of service.

(b) Earlier the individual was suffering from 'FISTULA IN ANO' since late 2011. The symptoms of this disease include pain, swelling and discharge of blood or pus from the anus.

(c) He had surgery done in November 2012 for FISTULA but did not find relief despite an operation, the 'LESIONS' would continue to discharge. He consulted numerous doctors in Army and civil but found no relief.

(d) Thus continuation of symptoms of 'FISTULA ANO' despite operation and no relief despite multiple consultations resulted in low moods and depressive symptoms. The applicant started fearing that he has developed some kind of cancer.

(e) It is in the above mentioned circumstances that the applicant developed the psychological disorder of 'HYPOCHONDRIACAL DISEASE'.

8. In the above mentioned situation we find that the RMB has denied attributability to military service on the ground that origin of the disease is in peace and there is no trauma or stress related to military service. In this scenario when we analyse the complete picture in totality, we find that military life has its own set of physical activities related with marching, running, standing up in front of seniors, coming to attention, stamping feet and saluting etc. These activities are routine and on a day to day basis. In this scenario, if a soldier has a problem in

the wrong end of the body, the chances of its magnification/delayed treating only increase. Probably in any other field of activity or profession he may not have had so much problem in dealing with this disease.

9. In view of the above and in line with the settled law on attributability by the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** (supra), we are of the considered opinion that the disability of the applicant is to be considered as aggravated by military service.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014), we are of the opinion that the applicant is eligible for the benefit of rounding off from 40% to 50% for life.

11. In view of the above, the Original Application No. 180 of 2018 deserves to be allowed, hence **allowed**. The respondents are directed to grant disability element to the applicant @ 40% for life which would stand rounded off to 50% for life w.e.f. the date of his discharge i.e. 31.08.2017. The respondents are directed to give effect to this order within a period of four months from the date

of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal BBP Sinha) (Justice Virender Singh)
Member (A) Chairperson

Dated: September, 2019

GSR/SB