

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 254 of 2019**Tuesday, this the 01st day of October 2019**Hon'ble Mr. Justice Virender Singh, Chairperson**
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Nk Om Prakash Singh, No 3192615A S/O Sh Tara Singh of the JAT Regiment, R/O vill-Gaharra Khurd, PO-Akola, Tehsil-Kirawali, Distt-Agra (UP).

....Applicant

Ld. Counsel for the: **Shri Ashok Singh, Advocate**
Applicant

Verses

1. Union of India through its Secretary, Govt of India, Ministry of defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, PO, New Delhi-110011.
3. OIC, Records The JAT Regiment, PIN-900496, C/O 56 APO.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Advocate**
Respondents. Central Govt Counsel

ORDER**“Per 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) To quash/set aside the impugned order dated 01 Jun 2017 passed by the respondent No 2 as Annexure No A-1 with compilation No 1 to this O.A. and grant the disability pension from date of retirement w.e.f. 01.10.2014 (FN).

(ii) Issue an appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the demand of justice.

(iii) Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 08 months and 26 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 29.03.2019.

3. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 25.01.1999 and was discharged from service on 30.09.2014 (AN) in Low Medical Category P2 (Permanent) on fulfilling the conditions of his enrolment. The Release Medical Board (RMB) has assessed his disability 'Primary Hypothyroidism' @ 30% for life but opined it to be neither attributable to nor aggravated by military service (NANA).

The claim of disability pension was rejected vide order dated 01.12.2014. First and second appeals were also rejected vide orders dated 13.01.2016 and 01.06.2017 respectively. It is in this perspective that the applicant has preferred the present O.A.

4. 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 while posted in field area of Jammu and Kashmir (J&K), hence it is attributable to and aggravated by military service. 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%.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the Medical Board as well as by the First and Second Appellate Authorities; hence the applicant is not entitled to disability pension. Further

submission of Ld. Counsel for the respondents is that in the instant case there is no history of therapeutic trials and no provisions for aggravation of disease has been prescribed in Para 38, Chapter VI of GMO-2002 as amended vide GMO-2008. He pleaded for dismissal of the O.A.

6. 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 disability pension claim and first and second appeals.

7. We have noted that the RMB has denied attributability to the applicant on the ground that 'It is a metabolic disorder, not connected with service'. We have also noted that the first and second appeals of the applicant have been rejected on the ground that 'Primary Hypothyroidism' is a result of malfunctioning of the thyroid gland hence the disability is not attributable to or aggravated by military service. In this situation we have tried to understand this disease through the Medical Literature available on the subject. We tried to understand metabolism which is generally defined as 'A term used to describe all chemical reactions involved in

maintaining the living state of the cells and the organism'. While it is clear that this disease involves body metabolism, functioning of thyroid gland or at times auto immunity of body, however nowhere we could find that disease is caused or aggravated by stress and strain of military service.

8. Thus since there is overwhelming medical evidence that this disease is not caused or aggravated by stress and strain therefore we are in agreement with the opinion of the Medical Board that this disease is NANA. We also feel that since this disease is primarily related with metabolism and functioning of thyroid gland, therefore, we are satisfied that this disease cannot be detected at entry point i.e. enrolment of a soldier hence the law settled on attributability by Hon'ble Supreme Court in the case of ***Dharamvir Singh vs UOI & Ors*** is of no help to the applicant.

9. In view of the above, the applicant has failed to prove his case hence the O.A. is liable to be dismissed and hence it is **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: October, 2019

gsr

(Justice Virender Singh)
Chairperson

