

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 570 of 2018****Monday, this the 30th day of September, 2019****“Hon’ble Mr. Justice Virender Singh, Chairperson**
“Hon’ble Air Marshal BBP Sinha, Member (A)”

No. 15359613H Ex Havildar Ramvir Singh, S/o late Hari Ram, R/o E-489, Sector-I, LDA Colony, Kanpur Road Yojna, Lucknow- 226012 (UP)

..... Applicant

Counsel for the : **Shri R. Chandra, Advocate**
Applicant

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Government of India, New Delhi - 110011
2. Chief of Army Staff, Army Headquarters, DHQ Post Office, New Delhi- 110011
3. The Officer-In-Charge, The Records Signals, PIN-908770, C/o 56 APO
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP)

.....Respondents

Counsel for the : **Shri Ashish Kumar Singh, Advocate**
Respondents. Addl. Central Govt. Standing Counsel**ORDER****Per Hon’ble Air Marshal BBP Sinha, Member (A)**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension and its rounding off benefit with the following prayers:-

“(I) The Hon’ble Tribunal may be pleased to set aside the orders dated 18.04.2018 (Annexure No.A-1).

(II) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.07.2008 alongwith its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.

(III) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

2. As per Office report this O.A. was preferred by the applicant with delay of 09 years, 04 months and 14 days, which has been condoned vide order dated 29.11.2018.

3. The brief facts of the case as borne out from the record of the case are that applicant was enrolled in the Army in Signal Corps on 26.09.1987 and was discharged from the service w.e.f. 01.07.2008 after rendering 20 years, 09 months and 05 days of Army service in low medical category. Release Medical Board (RMB) held at the time of discharge of the applicant diagnosed him to be suffering from “**CAD-NSTE AWMI Post Angioplasty**”, assessing disability at less than 20% (15-19%) and also opining disability as neither attributable to nor aggravated by military service. Feeling aggrieved by denial of disability element of the pension, applicant preferred an appeal on 20.02.2018, which was rejected vide letter dated 18.04.2018 as a NANA case and also disability being less than 20%. Hence the applicant has preferred the present O.A.

4. The respondents have filed counter affidavit denying the claim of the applicant on the ground that the disability in question is neither attributable to nor aggravated by military service as also that the

disability in question is less than 20%. It has also been pleaded that in a similar matter wherein the applicants of that petition had challenged their discharge order on the ground of low medical category, Hon'ble Supreme Court vide its judgment dated 07.11.2008 in Civil Appeal No. 6587 of 2008 in SLP (CO No.6037 of 2007 against a Delhi High Court judgment dated 20.11.2008 had directed that "all affected persons may rejoin service with all consequential benefits including continuity in service, seniority and pay upto 31.12.2008." Accordingly, vide letter dated 17.01.2009, followed by letter dated 27.01.2009, copies of which are annexed as Annexure-R-II and R-III, applicant was directed to report for duty but he did not report to his Unit within the given time.

5. The submission of learned counsel for the applicant is that the applicant was fully fit at the time of enrolment. He suffered from the disability in question due to stress and strain of Army service. He drew our attention to page 8 of the RMB (Annexure-CA-IV) endorsing with the following remarks:-

"2. Did the disability exist before entering service?
(Y/N/Could be)-N

5. (a). was the disability attributable to the individual's own negligence or misconduct. If so, in what way ? –No."

Further submission of the learned counsel for the applicant is that since the applicant was in a fit medical condition at the time of his enrolment, as such, his disability 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.

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 and also the disability percentage is less than 20% , as such, the applicant has rightly been denied disability pension. He pleaded 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. Prima facie this appears to be a case which is covered by the Hon'ble Supreme court judgment of ***Union of India & others vs. Rajpal Singh*** 2009 (1) SCC 216. In this judgment the Apex Court had ruled that discharge from service in low medical grounds can only be done by IMB and not RMB. It is in this context that the respondents have stated in their counter affidavit that the applicant was recalled vide their letter dated 17.01.2009 and asked to rejoin service after discharge. The respondents have further stated that the applicant had refused to join service again.

9. Notwithstanding the above and the fact that the applicant did not join service after being recalled, it is absolutely clear to us that his discharge on 01.07.2008 on low medical grounds, through RMB was illegal and hence in view of the Hon'ble Supreme Court judgment on ***Rajpal Singh*** (supra) we deem the release of the applicant as an invalidation out through an IMB.

10. Additionally the release of the applicant has been deemed as an invalidation on two counts i.e. firstly as per law settled by the Hon'ble Supreme Court in the case of ***Rajpal Singh*** (supra) and secondly

because as havildar the applicant was entitled to serve for a minimum of 22 years but his services were cut short at about 20 years and few months service due to low medical category.

11. Once the discharge of the applicant is deemed as invalidation then his disability percentage can't be less than 20% as per law settled on this issue by Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC.

Relevant extract of the judgment is as follows :

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

12. Now the issue which needs to be decided is the attributability/aggravation of the disability.

13. In the case in hand, since the Medical Board has assessed 15-19% disability for life for the disability in question and opined it as NANA case, we find that the crisp and one liner justification given by RMB stating “**CAD-NSTE AWMI Post Angioplasty**”, to be ‘A Constitutional Disorder’ is neither convincing nor rational. On careful perusal of the Medical Board we find that the reason given for disability in question

being NANA is very cryptic and lacks clarity. At page-8 of RMB itself in Para-2 it has been admitted that the disability did not exist prior to enrolment of the applicant in service. Likewise in Para-5(a) it has been admitted that the disability is not attributable to the individual's own negligence or misconduct. 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 & Ors***, (2013) 7 SCC 316, we are of the considered opinion that disability in question was aggravated by military service.

14. So far as the stand taken by the respondents that pursuant to the order passed by the Hon'ble Supreme Court the applicant was given intimation to re-join service but he did not report for duty is concerned, it appears that Hon'ble Supreme Court in a matter where all the Army personnel, who had served the Army for 15 years and found suffering from permanent low medical category and who were discharged by a general order dated 12.04.2007 directed that all affected persons may rejoin service with all consequential benefits, including continuity in service. Be that as it may, it does not affect the claim of the applicant as the applicant was discharged in permanent low medical category and he remained so because it is not the case of the respondents that if pursuant to the aforesaid direction the applicant had joined his duty his medical category would have improved. The applicant was discharged in permanent low medical category and he will remain so even if he would have re-joined the service.

15. 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). Hence the applicant is eligible for the benefit of rounding off.

16. Accordingly, O.A. No. 570 of 2018 is **allowed**. The impugned orders passed by the respondents are set aside. The disability of applicant for "**CAD-NSTE AWMI Post Angioplasty**", @ 15-19% for life is considered to be aggravated by military service. The respondents are directed to grant disability pension to the applicant @ 20% for life, rounded off to 50% for life w.e.f. the date of discharge i.e. 01.07.2008. However, due to law of limitation as settled by the Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, he shall be entitled for arrears of disability element from preceding three years of filing of the petition only. The date of filing the petition is 17.05.2018. 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.

17. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)
 Dated : September ,2019
 JPT/SB

(Justice Virender Singh)
Chairperson