

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 80 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. 10478822-P Ex Hav Vijay Kumar Pandey, S/o Ram Pher Pandey,
Resident of Village- Deogarh, PO- Deogarh, District Pratapgarh (U.P.)
..... Applicant

Counsel for the : **Shri V.P. Pandey, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, 101 South Block, New Delhi 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi- 110001.
3. Officer-In-Charge, Defence Service Corps, PIN- 901277, C/o 56 APO.
4. Principal Controller of Defence Account (P) Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Shri A.K. Sahu, 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:

(I) To issue order or direction to respondents to take appropriate action to process the payment of disability pension.

(II) To issue order / direction to respondent for grant of disability pension to the applicant from the date of his discharge from service i.e., w.e.f. 31.10.2016.

(III) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(IV) Cost of the appeal be awarded to the applicant.

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 01 year and 27 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 01.02.2019.

3. The brief facts of the case as borne out from the record are that applicant was enrolled in 103 Infantry Battalion Territorial Army (TA) on 12.10.1977 and discharged from there on 23.07.1981 under the provisions of TA Act Rule 14(b)(iii) of TA Regulation 1948. Thereafter he was enrolled in DSC on 24.07.1981 and his past service was counted towards DSC service as per option exercised by the applicant. Applicant was discharged from first spell of DSC service on 31.07.1991 on completion of terms of engagement after rendering 10 years 08 days qualifying service. Applicant was again enrolled in DSC on 30.04.1992 for second spell of service. Applicant opted to count his past Army and DSC service towards present DSC service and he was discharged from second spell of DSC service on 31.10.2016 on attaining superannuation age of 57 years and he was granted service pension vide PCDA (P) Allahabad PPO No. S/34848 (Army) for aggregate qualifying service of 36 years 06 months and 11 days. Being placed in low medical category at the time of discharge he was brought before a duly constituted Release Medical Board (RMB), which

assessed his disabilities as (a) 'IGT' @ 20%, (b) 'ISCHAEMIC STROKE (RT) MCA' @ 50% and (c) 'PRIMARY HYPERTENSION' @ 30% and composite disability at 69% for life. However, all the disabilities were considered neither attributable to nor aggravated (NANA) by military service. According to the applicant neither he was given any rejection order of disability pension nor he was communicated about processing his medical documents to PCDA (P) and as such he could not take any action regarding disability pension. It is in this perspective that 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 claim of the applicant was adjudicated and rejected by the concerned authority on the findings of RMB and the applicant was intimated of the decision but he did not prefer any appeal against it. It is further pleaded that the disabilities with which the applicant was found suffering were neither attributable to nor aggravated by the military service. Moreover the applicant was discharged from service on attaining the prescribed superannuation age in terms of his engagement.

5. The submission of learned counsel for the applicant is that the applicant was fully fit at the time of enrolment. He has picked up all these diseases due to stress and strain of service. He drew our attention to page 4 of the RMB (Annexure-CA-1) endorsing with the following remarks:-

“2. Did the disability exist before entering service? –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.”

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

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 diseases suffered by the applicant are neither attributable to nor aggravated by military service, as such, the applicant has rightly been denied disability pension in terms of Para 53 (a) of Pension Regulations for the Army Part-I (2008). 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. The law on the point of grant of disability pension and its rounding off is no more Res Integra. In the case of **Dharamvir Singh vs. Union of India & Ors**, (2013) 7 SCC 316, while considering the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In **Dharamvir Singh's** (supra) case, their Lordships held that the onus of

proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service.

9. In the case in hand, since the Release Medical Board has assessed 69% composite disability for life for all the disabilities and declared them NANA, we find that the crisp and one liner justification given by RMB stating 'IGT, ISCHAEMIC STROKE (RT) MCA and PRIMARY HYPERTENSION' to be NANA because beginning of these disabilities is in peace area, is neither convincing nor rational. On careful perusal of the RMB we find that the reason given for disabilities in question being NANA is very cryptic and lacks clarity. The RMB has opined that onset of disabilities is in peace area as per service profile of the applicant. This amounts to saying that there is no stress and strain of military service in peace stations. We all know that militaries all over the world believe in "THE MORE YOU SWEAT IN PEACE, THE LESS YOU BLEED IN WAR." Hence military personnel at peace stations have their own share of intense training and work related stress and strains. Thus considering all issues we are inclined to give the benefit of doubt to the applicant. Therefore, in terms of judgment of Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra), we are of the considered opinion that disabilities in question have aggravated by military service.

10. On the issue of benefit of rounding off of disability pension, we are of the opinion that the instant case falls within the decision of Hon'ble Apex Court in the case of **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 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.

11. Accordingly, O.A. No. 80 of 2019 is **allowed**. The disabilities of applicant for 'IGT', 'ISCHAEMIC STROKE (RT) MCA' and 'PRIMARY HYPERTENSION' @ 69% for life are considered to be aggravated by military service. The respondents are directed to grant disability pension to the applicant @ 69% for life rounded off to 75% for life w.e.f. the date of discharge i.e. 31.10.2016. 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.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated : September ,2019
JPT/SB