

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 23 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.JC-371608 Ex Sub Umesh Chandra,
S/o Late Kedar Chauhan,
R/o H.No.592K/839,
Mohalla Bangali Tola,
Prabhat Nagar, Kharika,
Telibagh, Lucknow 226029.

.....Applicant

Ld. Counsel for :
the Applicant

Shri Parijaat Belaura,
Advocate

Versus

1. Union of India through Secretary,
Ministry of Defence,
New Delhi.
2. The Appellate Committee on First Appeal (ACFA),
Dir PS4, AG's Branch,
Army Head Quarters,
DHQ PO New Delhi 110011.
3. Officer in Charge,
Signal Records Post Bag No.5,
Jabalpur MP 482001.
4. Principal Controller of Defence Account (Pension),
Draupadi Ghat,
Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Dr Shailendra Sharma Atal,
Centre Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. He has prayed for following reliefs :

“(I) To set aside the order dated 22.01.2007 (Anx 1) and as it relates to partially rejection of Applicant’s First Appeal with regards to disease (No.3 Primary Hypothyroidism) out of three disease.

“(II) To grant disability Pension @60% and round of the same to 75% giving the benefit of Govt. of India, Min. Of Def. Letter dated 31.01.2001 w.e.f. date of discharge of applicant i.e. 01.05.2005.

“(III) To pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 01.05.2005 till it is actually paid.

“(IV) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”

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 more than 12 years. Since payment of pension involves recurring cause of action, as such, the delay was condoned.

3. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army on 18.01.1979 and was discharged from service on 30.04.2005 in Low Medical Category after rendering more than 26 years of service. Since the applicant was in permanent Low Medical Category at the time of retirement, the Release Medical Board (RMB) assessed the disabilities as under :

(a) FRACTURE PATELLA ((LT) OPTC assessed 15%-19% for life

(b) DIABETES MELLITUS NIDDM OBESE TYPE –Aggravated by service – assessed 20% for life.

(c) PRIMARY HYPOTHYROIDISM- NANA- assessed 11-14% for life.

The composite assessment for all disabilities is 30% for life.

The PCDA (P), Allahabad after adjudication with consultation of Medical Adviser (Pension) accepted the ID Ser No.(a) as attributable to military service @ 15-19%, Ser. No. (b) accepted as Aggravated by military service @ 20%, Ser. No.(c) rejected as NANA and sanctioned disability elements @ 50% (duly rounded off composite disability from 30% to 50%) for Life w.e.f. 01st May 2005 vide PPO dated 24th July 2007.

4. Learned counsel for the applicant submitted that the applicant was enrolled in completely fit and healthy condition and was discharged from service after completion of more than 26 years of service. After about 12 years of service in the year 1991, he suffered from FRACTURE PATELLA ((LT) and in the year 2001 he was found to be suffering from DIABETES MELLITUS NIDDM OBESE TYPE. Subsequently in the year 2002, he was diagnosed to be suffering from PRIMARY HYPOTHYROIDISM. He further submitted that the third ID i.e. PRIMARY HYPOTHYROIDISM should also be considered as aggravated by military service and the composite disability percentage should be at 60%, thereafter it should be rounded off to 75%. He pleaded for composite disability element @ 60% rounded off to 75% for life.

5. On the other hand, learned counsel for the respondents submitted that the disability FRACTURE PATELLA ((LT) @ 15-19% has been accepted as Attributable to military service. His second disability DIABETES MELLITUS NIDDM OBESE @ 20% has been accepted as Aggravated and his third disability PRIMARY HYPOTHYROIDISM @ 11-19% has been rejected as NANA by PCDA (P) Allahabad in line with Court of Inquiry and RMB recommendations. The composite disability is 30% and accordingly PPO has been sanctioned disability element @ 50% after rounding off 30% to 50% for Life w.e.f. 01st May 2005 vide PPO dated 24th July 2007. Now the applicant has filed this O.A. basically for grant of disability element for the disability PRIMARY HYPOTHYROIDISM with a prayer to increase his composite disability percentage from 30 to 60%. He submitted that there is no merit in such a prayer and pleaded for dismissal of the O.A.

6. However considering all issues we are in agreement with the opinion of RMB and we don't agree with the applicant's view that his disability PRIMARY HYPOTHYROIDISM should also be considered as Attributable to or Aggravated by military service because it was not detected at the time of enrolment. We are clear that as per medical literature, this disease is primarily linked with functioning of THYROID GLAND. Thus a GLAND which was producing normal hormones at the time of enrolment can always have a differed production in middle ages. This being a METABOLIC issue, we are not convinced that we should interfere and overrule the medical opinion of the medical board on this issue. Hence, after considering all facts, we are not inclined to interfere with the findings of the RMB.

7. The PPO issued to the applicant for composite disability @ 30% rounded off to 50% is in order and hence the applicant has failed to make out a case for himself.

8. In view of the above, this O.A. deserves to be dismissed and is hereby **dismissed.**

(Air Marshal BBP Sinha)
Member (A)

Dated: September, 2019
PKG/SB

(Justice Virender Singh)
Chairperson