

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO.608 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.2695172F Ex GDR Hari Om Singh,
Son of Shiv Baran Singh,
R/o Vill Jajh PO Tapani Tehsil Bindki
District Fatehpur (UP) 212663.

.....Applicant

Ld. Counsel for :
the Applicant

Shri VP Pandey,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, 101 South Block,
New Delhi 110011.
2. Chief of the Army Staff, Integrate Headquarter, Ministry of
Defence, South Block, New Delhi 110001.
3. Addl Directorate General of Personnel Services
(AG's Branch), IHQ of Ministry of Defence (Army).
4. Officer-in-Charge, The Records Grenadiers, PIN 908776.
5. Principal Controller of Defence Account (P),
Draupati Ghat, Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Ms Amrita Chakraborty,
Ld. Counsel for the Respondents.

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/quash the rejection of disability pension after summoning the rejection order of disability pension and rejection of Appeal dated 23.10.2017 (annexed as Annexure A-1).

“(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. 31.01.2017.

“(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. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army on 06.01.2000 and discharge from service on 31.01.2017 in low medical category. The RMB considered his disabilities “**(i) IMMUNE SURVEILLANCE @ 40% & (ii) PRIMARY HYPERTENSION**” @ 30% as Neither Attributable to Nor Aggravated (NANA) @ composite 60% for life. The claim for disability pension was rejected by the PCDA (P) vide letter dated 16th February 2017. The applicant’s first appeal was rejected vide letter dated 23rd October 2017. The second appeal was also preferred by the applicant on 30th November 2017, which is still under consideration before the Appellate Authority. In the mean time, the instant O.A. has been preferred by the applicant.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and has been discharged from service

in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He lamented that his disabilities have been opined as NANA by RMB and he has unfairly been denied disability pension. He pleaded for grant of disability pension.

4. The respondents submitted that the RMB opined the disease “**(i) IMMUNE SURVEILLANCE & (ii) PRIMARY HYPERTENSION**” as NANA and hence the competent authority has rightly denied disability pension to the applicant. He concluded by stating that in terms of Para 173 of Pension Regulations, the applicant is not entitled to disability pension and pleaded for dismissal of the O.A.

5. We have heard the parties and perused the RMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service?

6. On careful scrutiny of the RMB, we have noted that the first disability **IMMUNE SURVEILLANCE** first started in November 2001. His second disability ‘**PRIMARY HYPERTENSION**’ has first started in July 2012. His first disability ‘**IMMUNE SURVEILLANCE**’ is basically a case of HIV infection, however as yet the applicant is asymptomatic with no evidence of AIDS as such he is on this surveillance. The medical records indicate denial of attributability on the ground that this infection is due to unprotected sex or by using infected needles hence not related to service and NANA. However, as for as second disability is concerned i.e. ‘**PRIMARY**

HYPERTENSION’ same has been denied attributability on the ground that ‘onset is in modified filed area and not Fd/HAA/CI area’.

7. Thus after considering all issues, we are of the opinion that between the two disabilities, the disability ‘**PRIMARY HYPERTENSION**’ deserves to be considered as ‘Aggravated by military service’ in line with the Hon’ble Supreme Court judgment of **Dharamvir Singh vs. Union of India & Others**, reported in (2013)7 SCC 316. We don’t agree with the concept that unless a disability starts in Fd/HAA/CI area, it can’t be considered as aggravated. Even peace location based military stations have their own stress & strain of military life.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of Hon’ble Apex Court in the case of *Union of India vs. Ram Avtar & Others*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). Hence, the applicant is entitled to the benefit of rounding off.

9. In view of the above the Original Application deserves to be partly allowed.

10. Accordingly the O.A. is **partly allowed**. The impugned orders passed by the respondents are set aside. The disability ‘**PRIMARY HYPERTENSION**’ @ 30% for life is to be considered Aggravated by military service. The respondents are directed to grant disability element to the applicant @ 30% for life which would stand rounded off to 50% for life from the date of discharge. The respondents are further 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: September, 2019
PKG/SB

(Justice Virender Singh)
Chairperson