

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 437 of 2018

Monday, this the 30th day of September, 2019

“Hon’ble Mr. Justice Virender Singh, Chairperson
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Ex. NC (E) Rajendra Singh Rawat (No. 815924K) S/o Late Shri Tham Singh Rawat, R/o House No. 021, Plot No. 35 D, Chandrabani Khalsa, PO Mohabewala, Tehsil and District Dehradun (Uttarakhand), Pin 248002.

..... Applicant

Ld. Counsel for the : **Shri Lalit Kumar, Advocate.**
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, Integrated Headquarters MoD (Air Force), New Delhi-110011.
3. Air Officer Commanding, Air Force Records Office, Subroto Park, New Delhi-110010.
4. Deputy CDA (Air Force), Subroto Park, New Delhi-110010.
5. PCDA (Penions), Draupadi Ghat, Allahabad (U.P.), Pin-211014.

.....**Respondents**

Ld. Counsel for the : **Shri Rajesh Sharma,**
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. 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 the impugned Order Nos. 1 to 3.*
- (ii) *To grant disability pension to the applicant @80% to be rounded off to 100% as per extant rules for life, with effect from 12th April, 2007, ie, the date of his discharge from service.*
- (iii) *To grant interest @12% per annum on the arrears of disability pension.*
- (iv) *To award the cost of this litigation; and*
- (v) *To grant any other relief or relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.*

2. The delay in filing the Original Application has been condoned vide order dated 17.09.2018.

3. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 05.02.1976 and was discharged on 11.04.2007 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Invaliding Medical Board (IMB) held at Ambala Cantt. on 14.03.2007 assessed his disabilities (i) **'PRIMARY HYPERTENSION (OLD) ICD No. (I-10.0), @30% for life, CVA HEMIPARETIC (RT) (OLD) ICD NO. G. 90.9 @50% for life, COMPLEX PARTIAL SEIZURE (LD) ICD No. G. 40.4 @15-19% for life and (iv) UNSPECIFIED PSYCHOSIS ICD NO. F-28 @30% for life, composite assessment @ 80% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service (Reason - constitutional disorder not connected with**

service). The claim of the applicant for grant of disability pension was rejected by the respondents. The applicant's first and second Appeals were also rejected by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 100%.

5. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @80% for life have been regarded as NANA by the IMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings as well as the records. The

only question which we needs to answer is whether the disabilities of the applicant are attributable to or aggravated by Military Service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service

determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that all the disabilities are neither attributable to nor aggravated (NANA) by service as the disease is constitutional disorder and not connected with service. This reasoning of RMB is not convincing and doesn't reflect the complete truth on this matter. The applicant was enrolled in Indian Air Force on 05.02.1976 and three disabilities have started after more than 19 years of Air Force service i.e. in the year 1995 and fourth disability has started after more than 29 years of Air Force Service i.e. in the year 2006. We are therefore of the considered opinion that the benefit of doubt in these circumstances when despite treatment by service, he is partially paralysed should be given to the applicant in view of

Dharamvir Singh vs Union of India & Ors (supra) and the disabilities of the applicant should be considered as aggravated by Air Force Service. Additionally the applicant will be entitled to the benefit of rounding off from 80% for life to 100% for life in view of Hon'ble Supreme Court judgment in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil appeal No 418 of 2012 decided on 10th December 2014).

9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element @ 80% for life to be rounded off to 100% for life may be extended to the applicant from

three preceding years from the date of filing of the Original Application.

11. In view of the above, the **Original Application No. 437 of 2018** is **partly allowed**. The impugned Orders dated 13.09.2007 and 06.02.2009, enclosed at Annexure Nos.2 and 3, are set aside. The disabilities **(i) PRIMARY HYPERTENSION (OLD) ICD No. (I-10.0)**, **(ii) CVA HEMIPARESIS (RT) (OLD) ICD NO. G. 90.9** **(iii) COMPLEX PARTIAL SEIZURE (LD) ICD No. G. 40.4** and **(iv) UNSPECIFIED PSYCHOSIS ICD NO. F-28** of the applicant are to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant @80% for life which would stand rounded off to 100% for life w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 01.08.2018. The respondents are 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. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

Dated: September, 2019
AKD/-

(Justice Virender Singh)
Chairperson