

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 461 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. 14254724-L Hav Sadanand Rai (Discharged), S/o Shri Bhola Nath Rai, R/o Village: Saidabad, Post: Saidabad, Tehsil: Jammaniya, District Gazipur (UP)- 232329

.....Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi- 110011.
3. Addl Dte Gen of Pers Ser (PS-4), Adjutant General’s Branch, IHQ of MoD (Army), DHQ PO, New Delhi- 110 011
4. OIC Records, SIGNAL RECORDS, Jabalpur (MP)- 482001
5. O/o The PCDA (Pensions), Draupadi Ghat, Allahabad (U.P.)-211014

.....Respondents

Ld. Counsel for the : **Shri Ramesh Chandra Shukla,**
Respondents Addl Central Govt Counsel

ORDER

“(Per Hon’ble Air Marshal B.B.P. Sinha, Member (A))”

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

“(A) To quash or set aside the Respondents letter dated 31 Mar 2008 (Annexure A-1 of OA) in terms of Hon’ble Apex Court Judgment passed in case Dharmvir Singh and Sukhvinder Singh.

(B) To direct respondents to grant disability pension to the applicant 30% for life from the date of discharge from service and also to grant rounding off benefit from 30% to 50% from the same date in terms of Govt of India letter dated 31 Jan 2001.

(C) To direct the respondents to pay the arrears of said disability pension alongwith suitable rate of interest as deem fit and proper by this Hon’ble Tribunal in the interest of justice.

(D) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”

2. The delay in filing the present petition has been condoned vide order dated 12.09.2019.

3. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled on 28.01.1984 in medically fit condition and was discharged with effect from 31.01.2008 in low medical category after completion of 24 years and 04 days of military service in Army. The Release Medical Board (RMB) considered his disability ‘**PRIMARY HYPERTENSION**’ as neither attributable to nor aggravated by military service @ 30% for life. The case for disability pension was rejected by the respondents. The applicant preferred an appeal dated 20.05.2018 against rejection of his disability pension claim, however he has not received any reply till date, he has now preferred this O.A.

4. The respondents have not filed any counter affidavit in this matter but during the course of hearing learned counsel for the respondents has produced a certified copy of RMB for

perusal of the Tribunal. In the circumstances, since no useful purpose would be served in keeping the petition pending, therefore, with the consent of learned counsel for the parties, we proceed to dispose of this petition finally without calling for filing of any counter affidavit.

5. We have heard Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Shri Ramesh Chandra Shukla, Ld. Counsel for the respondents and perused the record.

6. The only question which we need to answer in this case is as to whether the disability of the applicant is attributable to or aggravated by military service ?.

7. The law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** 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. It is pertinent to point out here that a perusal of RMB shows that attributability has been denied to the applicant only on the ground that the origin of disability is in 'a peace area'. Thus in light of the well settled law on attributability and the fact that RMB has denied attributability or aggravation only on the ground that the disease has started in peace area and not in a Field/ High Altitude Area/ Counter Insurgency Operation Area, we are of the considered opinion that the benefit of doubt must be extended in favour of the applicant and the disease is to be considered as aggravated by military service. We do not agree that stress and strain of military service is limited to Field/ High Altitude Area/ Counter Insurgency Area only and can't extent to peace areas.

9. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10th December, 2014). Hence we hold that the applicant is entitled to the benefit of rounding off from 30% to 50% for life.

10. As a result of foregoing discussions, the O.A deserves to be allowed and is hereby **allowed**. The impugned orders passed by the respondents rejecting the claim of the applicant for disability pension are set aside. The disability of the Applicant i.e. '**PRIMARY HYPERTENSION**' is held aggravated by military service and the applicant is held entitled to disability element from the date of discharge. The disability of the Applicant which was initially assessed as 30% for life will stand rounded off to 50% for life. However, in view of law of limitation vide ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445 the applicant shall be entitled to arrears of disability element only from preceding three years of filing the present O.A. The date of filing of this O.A. is 26.03.2019. The orders are to be implemented within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 8% on the arrears aforesaid till the actual date of payment.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated : September, 2019
JPT/SB