

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 656 of 2017

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. Sepoy Nandji Singh (Army No. 10212880) of 113 Infantry Battalion (TA), C/o 56 APO, son of Late Ram Awadh Singh, Resident of Village – Maharo, Post Office – Koth, Tehsil – Sikanderpur (East), District Ballia (U.P.)-221717.

..... Applicant

Ld. Counsel for the : **Shri K.K. Singh Bisht**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Rajput Regiment Abhilekh Karyalaya, Records The Rajput Regiment, PIN-900427, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) – 211014.

.....**Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,
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.

- (a) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by Records, respondent No. 3 communicating the decision of PCDA (P) Allahabad vide letter No. 10212880/DP/PG dated 24 May 2005 {Annexure No.A-1(ii)} rejecting the disability pension claim of the applicant.*
- (b) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by PCDA (P), respondent No.4 vide letter No.G-3/2005/1801/VIII dated 04-05-2005 {Annexure No.A-1(iii)} rejecting the disability pension claim of the applicant.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to grant 30% disability pension which after rounding of will be 50% disability pension to the applicant with effect from the date of his discharge i.e. 20.08.2004 (AN) along with arrears of disability pension with interest at the rate of 18% per annum.*
- (d) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with costs.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army (TA) on 07.09.1990 and was invalided out from service on 20.08.2004 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 151 Base Hospital on 27.07.2004 assessed his disability '**EXOPHORIA (RT) EYE (OPTD) H-36**' @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service (Reason unrelated to service). The applicant approached the respondents for grant of disability pension and its rounding off but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military 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 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the IMB. The applicant has rendered 07 years and 318 days of total embodied service in his entire service life. Hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. 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 needs to be answered is as to whether the disability of the applicant is attributable to or aggravated by Military Service?

6. This is a case which involves a soldier of Territorial Army. Hence, we have tried to understand the role of territorial army for better understanding of the attributability or aggravation factor to military service. Thus following facts are clear to us :-

- (a) The Indian Territorial Army (TA) is a second line of defence after Indian Army.
- (b) TA is not a profession, occupation or a source of employment. It is only meant for those people who are already in mainstay civilian professions; in fact gainful employment or self employment in a civil profession is a pre-requisite for joining the TA.

- (c) Volunteers of TA usually serve in uniform for a few days every year, so that they can bear the arms for national defence in times of dire need or national emergencies.

7. In view of above scenario of employment, the period in which TA personnel bear uniform and undergo training or actual duties in uniform is called Embodiment period or Embodied service and the period spent in their civil profession/personal pursuit in civil life is the Disembodied period or Disembodied service.

8. Thus in the above context it is very clear that a TA soldier is leading a dual life of a soldier during the limited Embodied period of service and a civilian life during the Disembodied period of service. Therefore, the causal connection between Embodied service and the origin of disability is an important factor in deciding attributability or aggravation to military service. In this context when we look at the case of the applicant following facts about his disability and Embodied service are absolutely clear :-

- (a) That his disability **“EXOPHORIA (RT) EYE”** first started on 05.01.2004. This disability is about the inability of the RT Eye to maintain Focus in co-ordination with left eye.
- (b) As per Exhibit I of Counter Affidavit the applicant was in Embodied service between 01.01.2002 to 20.08.2004.

Thus his disability has first started during Embodied service.

- (c) The applicant was discharged on 20.08.2004 due to low medical category.

9. The RMB opined his disability as NANA and denied him attributability by writing a cryptic sentence 'Not related to service'. Thus considering all issue we feel that this cryptic sentence is not adequate to justify the denial of attributability. Additionally, the medical literature on this disease clearly indicates that the reason that this disease happens due to muscle weakness in one eye is known but why this muscle weakness sets in only one eye and what are the exact reasons for this disease are not fully clear. Thus considering all issues and the fact that the disease has first started during an Embodied service, we are inclined to give benefit of doubt in favour of the applicant in terms of the law settled on this issue by Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. Hence, we consider his disability as aggravated by military service. Additionally, the applicant is entitled to the benefit of rounding off in terms of the law settled by the Hon'ble Supreme Court in the cases of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014) and ***Sukhvinder Singh vs. Union of India***,(2014) 14 SCC 364.

10. 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.”

11. 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 pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

12. In view of the above, the Original Application No. 656 of 2018 deserves to be partly allowed, hence **partly allowed**. The impugned orders dated 04.05.2005 and 24.05.2005, contained at Annexure Nos. A-1(ii) and A-1(iii) are set aside. The disability '**EXOPHORIA (RT) EYE (OPTD) H-36**' @30% for life of the

applicant is to be considered as aggravated by military service. The respondents are directed to grant disability pension to the applicant @30% for life which would stand rounded off to 50% for life with effect from his date of discharge. However, arrears of disability pension will be restricted to three years preceding the date of filing this Original Application. The date of filing this Original Application is 10.04.2017. 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)

(Justice Virender Singh)
Chairperson

Dated: September, 2019
AKD/-