

**E-Court**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 435 of 2022**

Wednesday, this the 21<sup>st</sup> day of September, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

14677085P Cfn. Anand Kumar Pandey (Retd), House No. 62A/1E, Sanik Colony, PO - Newa, District - Prayagraj, Uttar Pradesh.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri J.L. Joel**, Advocate.

Versus

1. Union of India, through the Secretary, Government of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, IHQ of MoD (Army), New Delhi-110011.
3. EME Records, Pin 900453 C/o 56 APO.
4. The PCDA (Pension), Draupadi Ghat, Allahabad (U.P)-211014.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Shyam Singh**, Advocate  
Central Govt. Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (A) *To quash or set aside Respondents letter dated 04.09.2021 rejecting the Applicant’s Disability Pension pursuant to Invalidment Medical Board Proceedings dated 17.06.2021 and /or:*
- (B) *To direct the Respondents to grant Disability Element to the Applicant from the date of invalidment from service with effect from 06.07.2021 till date and to pay arrears along with rounding off benefits @100% as per rules with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal and /or:*
- (C) *To direct the Respondents to grant CAA 100% for life and /or:*
- (D) *Any other relief as this Hon’ble Tribunal may deem fit in the interest of justice and good conscience.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 06.01.2005 and **invalided out from service** on 06.07.2021 (A/N) in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of **invalidation** from service, the Invaliding Medical Board (IMB) held at Military Hospital, Allahabad on 17.02.2021 assessed his disabilities  
(i) **‘SENSORINEURAL HEARING LOSS BILATERAL POST**

**POSTERIOR FOSSA MEDULLOBLASTOMA (ICD H90.3)' @20%** for life (ii) **'POSTERIOR FOSSA MEDULLOBLASTOMA (OPTD) (ICD-C71.6) @100%** with CAA for life and (iii) **'SOLITARY SEIZURE (ICD-R56.9)' @ 20%** for life, **Composite disabilities @100% with CAA for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension **was rejected vide letter dated 04.09.2021**. The applicant preferred application dated 14.02.2022 which too was rejected vide letter dated 22.04.2022. 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 enrolled in Army. The diseases of the applicant were contracted during the service, hence they are 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 @100% with CAA for life.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @100% for life have been regarded as NANA by the RMB, hence as per

Regulations 53 and 81 of the Pension Regulations for the Army, 2008 (Part – I) the applicant is not entitled to disability element of 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 and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. 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)."*

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by

endorsing that the disabilities i.e. **‘SENSORINEURAL HEARING LOSS BILATERAL (POST POSTERIOR FOSSA MEDULLOBLASTOMA (ICD H90.3), ‘POSTERIOR FOSSA MEDULLOBLASTOMA (OPTD) (ICD-C71.6) and ‘SOLITARY SEIZURE (ICD-R56.9)’** are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities Jan 2014, 03.06.2014 and 14.06.2013 respectively while posted in Peace location ( Binnaguri, West Bengal) and malignancy in origin, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Invaliding Medical Board for denying disability element of disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 06.01.2005 and the disabilities have been started after more than 7 years of Army service i.e. in the year 2013 and 2014. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and all the disability of the applicant should be considered as aggravated by military service.

8. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Dharamvir Singh vs Union of India & Ors***, we are of the considered view that benefit of disability element of disability pension @100% with Constant Attendant Allowance (CAA) for life may be extended to the applicant from the next date of his discharge.

9. We observe that applicant was 100% disable and therefore, 100% disability pension has been granted to the applicant. Since the applicant is in receipt of 100% disability pension, therefore, the pensioners who are drawing disability pension for 100% disability and are completely dependent on others for day to day activities, shall also be granted in addition to disability pension, the Constant Attendance Allowance in accordance with the rules/instructions issued by the Govt. from time to time. As per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, Govt. of India, Ministry of Defence letter No. 1(2) 2013-D (Pen/Pol) dated 27.04.2015 and PCDA (P) Allahabad Circular No. 543 dated 27.05.2015, applicant is entitled to Constant Attendance Allowance.

10. In view of the above, the **Original Application No. 435 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. All the disabilities of the applicant are held as aggravated by Army Service. The applicant is

entitled to get disability element @100% with Constant Attendant Allowance (CAA) for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @100% with Constant Attendant Allowance (CAA) for life from the next date of his 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. Default will invite interest @ 8% per annum till the actual payment

11. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 21 September, 2022

AKD/-