

Court No. 1

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

Original Application No. 251 of 2019

Thursday, this the 17th day of December 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Chandi Prasad (Ex. Naik No. 1260010N), S/O Sri Raj Deo Prasad, R/O of Village : Anhari Bari, Post – Kuber Nath, Tehsil – Padrauna, District Kushi Nagar (UP).

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Incharge, Records Artillery Records, Nasik Road Camp-422002, PIN (Army)-908802, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents :**Shri Arun Kumar Sahu**
Central Govt Counsel.

ORDER

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

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

*(i) This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 4.10.1989 invalided out for being medically unfit towards his disability ‘**IMMATURE CATARACT BOTH EYE 366**’, **30% for two years being medical category EEE lower than ‘AYE’.***

(ii) This Hon’ble Court may further be pleased to pass such other and /or further order as deem fit, proper and necessary in the circumstances of this case.

(ii) Award costs to the applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 14.02.1973 and was discharged from service on 05.10.1989 in low medical category EEE under the provisions of Rule 13 (3) III (iii) of Army Rule, 1954. At the time of discharge Invaliding Medical Board held on 30.08.1989 assessed disability ‘**IMMATURE CATARACT BOTH EYE 366**’ as 70% for two years and considered as neither attributable to nor aggravated by the military service. The petitioner was granted service pension with effect from 05.10.1989 for life. Claim of the applicant for the grant of

disability pension was rejected by the respondents vide letter dated 25.06.1990 being neither attributable to nor aggravated by military service. Applicant made various correspondences for the grant of disability pension, but the same were also rejected by the respondents. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

3. We have heard Shri Ashok Kumar, Ld. Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he has been invalided out of service in Low Medical Category for the disability '**IMMATURE CATARACT BOTH EYE 366**' assessed as 70% for two years. His disability was first time assessed after about 16 years of service. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service.

5. Learned counsel for the respondents has not disputed that applicant suffered composite disabilities to the extent of 70% due to disease, but he submitted that competent authority while rejecting the claim of the applicant has viewed that disability was found as neither attributable to nor aggravated by military service, therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the

applicant for the grant of disability pension has correctly been rejected.

6. The question before us for consideration is simple and straight whether disability of applicant is 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 vs. Union of India & Ors*** (supra). 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. After considering all issues we have noted that the only reason given by Invaliding Medical Board for denying Attributability for disease is that it is not connected with military service being a constitutional degenerative disorder of the lens of the eyes. We find that when the applicant joined the Army, he was medically examined and found to be in Shape-I and the aforesaid disability was contracted after about 16 years of service which resulted in the downgrading of his medical category. He was serving in Leh (J&K) Field/High Altitude Area while invalided out from service. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of **Dharamvir Singh** (Supra).

Therefore, we consider the disease of the applicant as aggravated by military service. We also converge to the view that, in view of law laid down by Hon'ble The Apex Court in the case of **Veer Pal Singh**, in the interest of justice, the case of the applicant be referred to Review Medical Board for reassessing the medical condition of the applicant for further entitlement of disability pension, if any.

9. On the issue of rounding off of disability pension, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding as he had retired from service on 05.10.1989.

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

11. Accordingly, O.A. is **allowed**. The impugned order dated 25.06.1990 rejecting the claim for the grant of disability pension passed by the respondents is set aside. The respondents are directed to grant disability pension to the applicant @ 70% for two years from the date of discharge. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension. 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 @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to cost.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December 2020
UKT/-