

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

O.A. No. 697 of 2017

Rajendra Singh

By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>09.12.2020</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents.</p> <p>2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">“(I) Hon'ble Tribunal may be pleased to set aside the order dated 07/11/2003 (Annexure No A-1) and order dated 18/08/2017 (Annexure No A-2).</p> <p style="padding-left: 40px;">(II) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension at the rate of 100% with effect from 25/01/1983 for life along with the interest at the rate of 18% per annum.</p> <p style="padding-left: 40px;">(III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”</p> <p>3. The undisputed facts, as averred by the learned counsel for both the parties, are that applicant was enrolled in the Indian Army on 29.11.1965 in medically fit condition and was invalided out from service with effect from 24.06.1983 under Army rule 13 (3) III (iii) in low medical category after rendering more than 17 years of service. The Invaliding Medical Board (IMB) held on 04.02.1983 considered the disabilities (i) “CHRONIC TRACHOMA III BOTH EYES” @ 20%, (ii) “AMBLYOPIA BOTH EYES” @ 60% and (iii) “BRONCHIAL ASTHMA” @ 30% for two years and considered it aggravated to</p>

service, whereas first and second disabilities were considered as neither attributable to nor aggravated by military service (NANA) and composite assessment was @ 100% for two years. The case for disability pension was notified by the PCDA (P) Allahabad for the disability of Bronchial Asthma @ 30% and PPO dated 22.09.1983 was issued for two years and thereafter with effect from 26.02.1987 applicant's disability pension was revised and rounded off to 50% for life vide PPO dated 09.11.2011.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter was invalided out from service in Low Medical Category, and was granted disability pension @ 30% for two years for third ID i.e. "BRONCHIAL ASTHMA" which was considered as aggravated to service which was later rounded off to 50% for life, but for the first and second disabilities which were assessed @ 20% and 60% respectively, no disability pension was granted even though composite assessment for all the disabilities was 100% for two years, as such, his first and second disabilities should also be considered as attributable to and aggravated by military service for the grant of disability pension in the light of **Secretary, Ministry of Defence and Others vs. A.V. Damodaran (Dead) Through LRS and Others** (2009) 9 SCC 140 in which the Hon'ble Apex Court has held that the opinion given by the doctors or the Medical Board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injury/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service. But, in the instant case, respondents have not given the weightage to medical expert's opinion, therefore, applicant should be granted disability element for remaining disabilities also.

5. While filing counter affidavit, the respondents have not disputed that applicant suffered disability to the extent of 100% for two years, but submitted that third disability which was considered as aggravated to military service has been granted to the applicant @ 30% for two years and later rounded off to 50%, but the first and second disabilities were considered as neither

attributable to nor aggravated by military service, as such, in terms of Para 173 of Pension Regulations for the Army 1961, Part-I, he was not granted disability element of other two disabilities.

6. Learned counsel for the respondents submitted that as per para 5 & 6 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, the causal connection between the military service and disability has to be established by the appropriate authorities and mere fact that '**a disease has manifested during military service does not per se establish attributability to or aggravation by military service**'. He further submitted that as per Para 8 of Casualty Pensionary Awards 1982, "**Attributability / aggravation shall be conceded if causal connection between death / disablement and military service**" is certified by appropriate medical authority.

7. We have perused the record and also gone through the IMB. The question before us is whether first and second disabilities suffered by the applicant are also attributable to or aggravated by military service?

8. 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* 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)."

9. We have noted that the applicant is suffering from "Chronic Trachoma III Both Eyes" and "Amblyopia Both Eyes" from the year 1978 i.e. after 13 years of service and has been invalided out of service after 17 years of service. His IMB has opined his disability @ 100% for two years, first and second disabilities to be NANA and third disability aggravated to military service. Hence, the applicant is in receipt of 30% disability pension rounded off to 50% for life for third disability (BRONCHIAL ASTHMA) being aggravated to service. We have also noted that the reason given by IMB to declare his disability as NANA is very brief and cryptic i.e. "Not connected with service". We fail to understand as to how "Chronic Trachoma III Both Eyes" and "Amblyopia Both Eyes", which were developed after about 13 years of service, can be certified as not connected with service. Thus, we would like to give benefit of doubt to the applicant and consider both the disabilities "Chronic Trachoma III Both Eyes" and "Amblyopia Both Eyes" as aggravated by military service.

10. Since the medical board has assessed the disability as 100% for two years and applicant is already in receipt of 30% disability element duly rounded off to 50% for third disability, as such, keeping in view the judgment of *Veer Pal Singh vs. Ministry of Defence*, reported in (2013) 8 SCC 83, we feel that the case of the applicant should be recommended for Re-survey Medical Board to

reassess further entitlement of disability element, for first and second disabilities of EYES, if any.

11. In view of above, Original Application deserves to be allowed and is allowed. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 100% for two years from the date of his discharge and further @ 100% up to 25.02.1987 i.e. till validation period of Re-survey Medical Board. Thereafter, with effect from 26.02.1987 applicant is already in receipt of 30% disability element rounded off to 50% for life for his third disability i.e. 'BRONCHIAL ASTHMA' being aggravated. However, due to law of limitations, the applicant will not be entitled to arrears of disability element for first and second disabilities. Arrears, if any, will be restricted to three years prior to filing of this Original Application. The date of filing of Original Application is 12.10.2017. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for deciding his further entitlement of disability element, if any, for his first and second disabilities i.e. (i) "CHRONIC TRACHOMA III BOTH EYES" and (ii) "AMBLYOPIA BOTH EYES". 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. 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB