

RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

CIRCUIT BENCH, NAINITAL

Original Application No. 143 of 2020

Friday, this the 04th day of December 2020

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

EX. Hav No. 88240374 Anand Singh Ram Singh
S/O Ram Singh, R/o Village- Phagpur, Post Office- Chandani,
Anakpur, District – Champawat – 262310.

.....Applicant

Ld. Counsel for : **Shri Kishore Rai**
Applicant **Advocate**

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi- 110001.
2. PCDA (P), Allahabad, Uttar Pradesh.
3. Chief of Navy, Naval HQs, New Delhi, OOA
4. Senior Record Officer, Defence Security Corps Records, PIN – 901277, C/O 56 APO.

.....Respondents

Ld. Counsel for the : **Ms. Pushpa Bhatt,**
Respondents **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) A direction to quash the order dated 13.11.2015 passed by respondent no. 4 (contained as Annexure No. 3 to this original application) or to

(ii) A direction to grant the disability pension to the applicant from the date of discharge i.e. 30.11.2015 along with rounding of to the tune of 50%.

(iii) To summon the entire records of the applicant pertaining to computation of his disability pension.

(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in Navy on 24.04.1978 as Steward logistics and was discharged from service on 30.06.1993 after completing 15 years of service. The applicant was further enrolled in Defence Security Corps on 25.01.1994 and discharged from Defence Security Corps on 30.11.2015 on completion of terms of engagement. At the time of discharge Medical Board assessed disabilities as “(i) Primary Hypertension (ii) Dyslipidemia and (iii) Hyperruricemia” with 25% for life and considered as neither attributable to nor

aggravated by the military service. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 13.11.2015 being neither attributable to nor aggravated by military service. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. We have heard Shri Kishore Rai, Ld. Counsel for the applicant and Ms. Pushpa Bhatt, Ld. Counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in Defence Security Corps in medically fit condition thereafter he has been retired from service in Low Medical Category with disabilities “(i) Primary Hypertension (ii) Dyslipidemia and (iii) Hyperruricemia” @ 25% for life. He pleaded for the disabilities of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is also entitled to disability pension and its rounding off to 50%.

5. Per contra, learned counsel for the respondents has not disputed that the applicant suffered disability to the extent of 25% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disabilities “(i) Primary Hypertension (ii) Dyslipidemia and (iii) Hyperruricemia” , assessed @ 25% for life are 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 grant of disability pension has correctly been rejected.

6. The question before us 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. Thus considering all issues we have noted that the only reason given by RMB for denying Attributability for disease “(i) Primary Hypertension (ii) Dyslipidemia and (iii) Hyperruricemia” are that it first started in a peace area and not in a Fd/HAA/CI area. We are not convinced by this logic that stress & strain of military life is only in Fd/HAA/CI areas and there is no such stress in peace areas. Hence in these circumstances we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon’ble Apex Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the diseases of the applicant i.e. “(i) Primary Hypertension (ii) Dyslipidemia and (iii) Hyperruricemia” as aggravated by military service.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in

(2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar** and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

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

11. Accordingly O.A. is **allowed**. The impugned order dated 13.11.2015 rejecting the claim for grant of disability pension passed by the respondents is set aside. The disabilities “(i) Primary Hypertension (ii) Dyslipidemia and (iii) Hyperruricemia” @ 25% for life are to be considered as Aggravated by military service. The respondents are directed to grant disability element to the applicant @ 25% for life which would stand rounded off to 50% for life. However due to limitations as laid down by the Hon’ble Supreme Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the arrears of disability element will be restricted to three years prior to filing of the Original Application. The date of filing of Original Application is 31.10.2018. 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 @ 9% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December 2020
UKT/-