

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 485 of 2019**Friday, this the 2nd day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. IC-50564Y Rank-Lt Col Name-Soban Singh Danu (Retd),
S/o Sri Man Singh Danu, R/O Danu Niwas-193, P.O. Anarwala,
District-Dehradun, Pin-248003, Uttarakhand, presently residing
at C/O Lt Col VS Danu, 2IC 15 Kumaon, Lucknow Cantt,
Lucknow.

.... Applicant

Ld. Counsel for the: **Mrs Patil Usha Tanaji**, Advocate.
Applicant **Shri Gyanendra Kumar Sharma**, Advocate
Shri Dharam Raj Singh, Advocate

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army), Army HQ, South Block, New Delhi.
3. Additional Directorate General, Policy & Planning/MP-D(D), Adjutant General Branch, Integrated HQ of Ministry of Defence (Army), West Block-III, RK Puram, New Delhi-110066.
4. Officer-In-Charge Records, The Dogra Regiment Cantonment Faizabad through its Officer-in-Charge.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the: **Shri Yogesh Kesarwani**, Advocate
Respondents.

ORDER (Oral)

1. 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:-

(a) To issue/pass an order or directions to set-aside/quash the orders dated 03.01.2017 and 17.04.2018 passed by respondents.

(b) To issue/pass an order or directions to the respondent to decide the Second Appeal dated 09.07.2018 sent by applicant to respondent No. 3.

(c) To issue/pass an order or directions to the respondents to grant of disability element of disability pension @ 77.32% and subsequently benefit of rounding off disability element of disability pension from 77.32% to 100% for life from the date of retirement i.e. 31.01.2017 along with @ 12% interest on arrear along with @ 9% interest in light of Hon'ble Apex Court cases i.e. 'Sukhwinder Singh vs Union of India' (supra) and 'Union of India vs Ram Avtar'.

(d) To issue/pass any other order or directions as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(e) To allow this original application with costs.

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 08.06.1991 and superannuated on 31.01.2017 after completion of 25 years of service. Applicant suffered a mine blast injury in the year 2007 following 'Right Ankle Transtibial Amputation'.

The aforesaid injury was declared attributable to military service. In the year 2009 and 2013, he suffered with 'Primary Hypertension and Impaired Glucose Tolerances' respectively. Release Medical Board (RMB) conducted on 27.08.2016 assessed Primary Hypertension @ 30% for life and Impaired Glucose @ 19% for life neither attributable to nor aggravated by military service (NANA). The applicant has conceded that his claim for first injury has been admitted but claims for disabilities No. 2 and 3 have been denied vide order dated 03.01.2017. After rejection of disability pension claim, first appeal was also rejected vide order dated 17.04.2018. Thereafter, second appeal was preferred on 09.07.2018 which has not been decided as yet. Hence this O.A. has been filed for grant of disability pension.

3. Learned counsel for the applicant submitted that applicant was commissioned in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to commissioning, therefore, any disability suffered by applicant after joining the service should be considered as either attributable to or aggravated by military service and he should be entitled to disability pension. Applicant's learned counsel further submitted that disability pension claim of applicant has been rejected on the ground that his disabilities have taken place while he was posted in peace station. Further submission of learned counsel for the applicant is that since applicant has developed 'Primary Hypertension and Impaired Glucose Tolerance' due to stress and

strain related rigors of military service therefore, these disabilities should be aggravated by military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disabilities (i) Primary Hypertension and (ii) Impaired Glucose Tolerance as NANA, therefore, the competent authority has rightly rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the diseases as NANA on grounds of the disease having no relation to service conditions. During course of hearing, learned counsel for the respondents conceded that disability No. 1 i.e. 'Mine Blast Injury Right Ankle Transtibial Amputation' is attributable to military service but disabilities No. 2 and 3 are NANA. He concluded that applicant is not entitled to disability element for disabilities No. 2 and 3.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – are the disabilities No. 2 and 3 of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. 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/aggravation, we find that the RMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. disabilities have originated in peace area, therefore, have no relation with military service. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his commission and the disability 'Primary Hypertension' has taken place on 14.05.2009 after completion of about 18 years of his service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability No. 2 of the applicant should be considered as aggravated by military service.

8. In view of the above, applicant's first disability i.e. 'Mine Blast Injury Right Ankle Transtibial Amputation' which is @ 60% for life and held attributable to military service by the RMB, is rounded off to 75% for life w.e.f. date of discharge in terms of Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar & ors***, Civil Appeal No. 418 of 2012 dated 10th December 2014. Disability No. 2 i.e. 'Primary Hypertension' @ 30% for life is held aggravated by military service and is rounded off to 50% for life. Since disability No. 3 i.e. 'Impaired Glucose Tolerance' is @ 19% (below 20%) for life and NANA, therefore, applicant is not entitled to disability element in terms of Hon'ble Apex Court judgment in the case of ***Union of India & Ors vs Wg Cdr SP Rathore***, Civil Appeal No 10870 of 2018 decided on 11.12.2019.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. Applicant is held entitled to 75% disability element for disability 'Mine Blast Injury Right Ankle Transtibial Amputation' and 50% disability element for disability 'Primary Hypertension'. It is made clear that battle casualty disability cannot be clubbed with other disabilities like primary hypertension etc. Since applicant has been held entitled to 75% disability element for 'Mine Blast Injury Right Ankle Transtibial Amputation', therefore he is only entitled to 25% disability element for primary hypertension as aggregate disability cannot go beyond 100%. Respondents are directed to pay disability element along

with arrears to applicant w.e.f. his date of discharge within four months from today. Default will invite interest @ 8% p.a.

10. No order as to costs.

11. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 02 July, 2021

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