

Court No. 1 (E Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 19 of 2020**Thursday, this the 15th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

O.No. 171273-H Ex NAI (AH) Rishi Pal Singh, S/o Shri Jag Pal Singh, Resident of Village & PO- Keshopur Godrana, District- Aligarh, Pin – 202150 (U.P.)

.....Applicant

Ld. Counsel for Applicant: **Shri Om Prakash Kushwaha,
Advocate**

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Navy), South Block, New Delhi- 110011.
2. The Chief of the Navel Staff, Integrated Headquarters, Ministry of Defence (Navy), Dte of Pay and Allowances 'D' II Wing, Sena Bhawan, New Delhi -110011.
3. The Commodore (For SSO (Promotion) Bureau of Sailors, Sion- Trombay Road, Mankhurd, Mumbai-400088.
4. INS Hansha, A.T.C. Dabolin, Goa, Pin Code- 403801.
5. Principal Controller of Defence Accounts (Navy), Mumbai, Pin Code- 400088.
6. Branch Manager, Central Bank of India, P.B No- 33, Udai Singh Jain Road, Aligarh.
7. Chief Manager, C.P.P.C. IInd Floor, M.M.O. Building, MG Road Fort, Mumbai, Maharashtra.

.....Respondents

Ld. Counsel for the : **Shri Arun Kumar Sahu,**

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:-

(A). *To issue/ pass an order or directions to set aside/quash the Rejection order no. DP/D/LRDO/171273H dated 24.03.2004, letter no. PN/0134/210/04/INQ(N)DPA dated 13.10.2005 and order no. PN/0134/210/04 Nil dated January 2009 passed by respondents.*

(B). *To issue/ pass an order or directions to the respondents to grant disability element of disability pension @ 30% w.e.f. from date of discharge i.e. 30.09.2003 alongwith 12% interest on arrear in light of Hon’ble Apex Court Cases i.e. “Sukhvinder Singh Vs Union of India” (Supra).*

(C). *To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension @ 30-50% for life alongwith 12% interest on arrear w.e.f. from date of discharge i.e. 30.09.2003 in light of Hon’ble Apex Court cases i.e. “Union of India Vs Ram Avtar” (Supra) and vide Government of India Ministry of Defence letter dated 31.01.2001.*

(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. Considering that in pensionary matters bar of limitation is not applicable, delay in filing Original Application is condoned.

3. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Navy on 03.05.1988 and was invalided out from service 30.09.2003(AN) after rendering

total 15 years of service in Navy on medical grounds in Low Medical Category for the diseases (a) **ISCHAMIC CVA (LT) HEMIPARASIS, 10%**, (b) **SCHIZOPHRENIA, 10%** and (c) **RECURRENT DISLOCATION (LT) SHOULDER- 10%**. The Release Medical Board of the applicant held on 23.04.2003 at Headquarters Western Naval Command assessed his composite disabilities @ 30% for 2 years and considered as neither attributable to nor aggravated by Navy service (NANA) and not connected with service. The applicant has been granted service pension for rendering 15 years of service vide PPO No 09/97/B/S/01474/2003. Claim of applicant for the grant of disability pension was rejected by the respondents vide letter dated 24.03.2004 being NANA. His first and second appeal for grant of disability pension were also rejected vide letter dated 13.10.2005 and letter dated January 2009. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

4. Learned Counsel for the applicant submitted that applicant was enrolled in the Navy in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to joining, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by Navy service and he should be entitled to disability pension.

Learned Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. 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. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 30% for two years, but he submitted that competent authority while rejecting the claim of the applicant has viewed that disabilities were found neither attributable to nor aggravated by Navy and sanction of disability pension is based on Regulation 101 and 105 (B) of Navy Pension Regulation 1964 wherein the disability should be either attributable to or aggravated by the Naval service and minimum assessment for the disability is mandatorily required to be 20% or more, hence claim of the applicant for grant of disability pension has correctly been rejected.

6. We have heard learned counsel for the parties and perused the record.

7. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by Navy 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*** (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)."

9. After considering all issues we have noted that Release Medical Board has not given any reason for denying Attributability for diseases. We find that when the applicant joined the Navy, he was medically examined and found to be in Shape-I and the aforesaid disabilities were first started in the year 1995 after about 07 years of service which resulted in the downgrading of his medical category. 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 Navy 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.

10. 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.

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

12. Accordingly, O.A. is **allowed**. The impugned orders passed by the respondents rejecting the claim for the grant of disability pension are set aside. The respondents are directed to grant disability pension to the applicant @ 30% for two years from the date of discharge, which shall stand rounded off to 50% for two years. 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.

13. No order as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15 July, 2021

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