

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 25 of 2022**Friday, this the 20th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 3019313W, Ex Rect, Aditya Pratap Singh
S/o Late Sri Anil Kumar Singh
R/o Khasra No. 135, Mauja Ukharra, Agra (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Dharam Raj Singh &**
Dr. Ashish Asthana, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Officer-in-charge Records, Rajput Regiment Abhilekh Karyalaya Records, The Rajput Regiment, PIN – 900427, C/o 56 APO.
4. Additional Directorate General of Personnel Services/AG's Branch, IHQ of MoD (Army), PIN – 900256, C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri J.N. Mishra,**
Central Govt Counsel**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“A. To issue/pass an order or direction to set-aside/quash the order/letter no. 3019313W/DP/PG dated 12 Jul 2019 issued by respondent No. 3 and order/letter no. B/40502/11/2020/AG/PS-

4 (Imp-II) dated 20 March 2020 issued/passed by respondent no. 4.

B. To issue/pass an order or direction to the respondents for grant of disability pension in the percentage @ 40% for life w.e.f. 20.07.2018 (date of invalidment i.e. 19.07.2018) alongwith 12% interest on arrear in light of Hon'ble Apex Court judgments.

C. To issue/pass an order or direction to the respondents grant benefit of rounding off disability pension in tune of @ 50% for life w.e.f. 20.07.2018 (date of invalidment i.e. 19.07.2018) alongwith 12% interest on arrear in light of Hon'ble Apex Court judgments as stated above.

D. To issue/pass an order or direction 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. Briefly stated facts of the case are that the applicant was enrolled in the Army on 20.03.2017 and was invalided out from service on 19.07.2018 in low medical category under Rule 13 (3) IV of Army Rules, 1954 after rendering 1 year, 03 months and 30 days of service. The Invaliding Medical Board (IMB) assessed his disability **"SEVERE DEPRESSIVE EPISODE WITHOUT PHYCHOTIC FEATURES"** @ 40% for life and net assessment qualifying for disability pension NIL for life and opined the disability as neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected by the competent authority vide their letter dated 12.07.2019. The applicant submitted first appeal dated

18.12.2019 which was also rejected vide order dated 20.03.2020. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The applicant sustained injury during PPT and symptoms arose after fall into 9 feet ditch during PPT. This fact has been admitted in the medical opinion of Classified Specialist (Psychiatry) that *“individual came under medical care initially in Sep 2017 following a fall during PPT with c/o backache, body ache and dry cough with blood coloured sputum. Individual again had c/o low backache of 04 days duration following blunt trauma during BPET on 17.11.2017. Further investigation by Neurosurgeon revealed LSTV through MRI LS Spine, so was treated as a case of contusion back. As per individual he continued to have backache since then and gradually started remaining sad most of the time. He had intact insight and poor appetite. He was given psychotherapy at military hospitals. Due to major psychiatric disorder during training, unfit to handle weapons and relapsing nature of illness he was recommended to be invalided out from service.”* Hence, disability of the applicant was contracted during the service and therefore, it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of IMB by higher competent authority was wrong and should be set aside.

4. Learned Counsel for the applicant further submitted that applicant filed O.A. No. 587 of 2019 before this Tribunal which was disposed of vide order dated 17.12.2020 with direction to the respondents to decide representation of the applicant dated 19.10.2019 by a speaking and reasoned order within a period of three months. The representation of the applicant was decided/rejected by the competent authority vide order dated 20.03.2020 in an illegal and unjust manner. He placed reliance on the judgment of the Hon'ble Apex Court in the case of Civil Appeal No. 4949 of 2013, **Dharamvir Singh vs. UOI & Ors**, decided on 02.07.2013 and **Sukhvinder Singh vs. Union of India & ors** reported in (2014) STPL (WEB) 468 SC and pleaded that applicant be granted disability pension @ 40% duly rounded off to 50% in terms of **Union of India and others v. Ram Avtar** (Civil Appeal No 418 of 2012 dated 10.12.2014).

5. On the other hand, Ld. Counsel for the respondents contended that applicant sustained injury in BPET when he was jumping over 9 feet ditch and disability of the applicant i.e. **"SEVERE DEPRESSIVE EPISODE WITHOUT PHYCHOTIC FEATURES"** has been regarded as 40% for life by IMB with net assessment qualifying for disability was made as Nil% for life. The IMB opined the disability as neither attributable to nor aggravated by military service and later on applicant was diagnosed a case of "Major Depression" by the medical authorities. Hence, as per Rule 81 of Pension Regulations for the Army, 2008 (Part-1) and Para 5 and 6 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces personnel, 2008, the causal connection between 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. Hence, as per Regulation 179 of Pension Regulations for the Army, 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

6. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB and the rejection order of disability pension claim. 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 well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 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)."

8. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disability has no causal connection and not connected to military service as per para 54 of Ch-VI of GMO (MP) 2008'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disability in question had occurred during service on 06.12.2017 when the applicant sustained injury during PPT (duty/training) and symptoms arose after fall into 9 feet ditch during PPT. Therefore, we are of the considered opinion that as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) his disability should be considered as aggravated by military service.

9. We find that applicant was found mentally and physically fit for service at the time of enrolment in the Indian Army and there is no such note in the service documents that he was suffering from any

disease at the time of enrolment. He was enrolled after a thorough medical check up by a Medical Officer. The applicant sustained injury during PPT and this disability developed to the applicant only after falling into 9 feet ditch which has been admitted/mentioned in the medical opinion of Classified Specialist (Psychiatry) also. So, it is established that disability of the applicant developed only after falling into ditch and not for any other reason, hence, his disability will be treated as attributable to military service which will enable him grant of disability pension having causal connection being on duty (PPT).

10. In view of the above, applicant is held entitled to 40% disability pension for life from his date of invaliding from service. The applicant will also be eligible for the benefit of rounding off of disability pension from 40% to 50% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

11. In the result, the Original Application is **allowed**. The impugned orders passed by the respondents are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability pension @ 40% for life from the next date of invaliding out from service. The respondents are directed to grant disability pension @ 50% for life from the next date of invaliding out from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding

the date of filing of the instant O.A. The date of filing of this O.A is 10.01.2022. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

SB