

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

...

OA No.817 of 2014

...

Raghubir Singh

...Petitioner

Versus

Union of India & others

...Respondent(s)

...

For the petitioner : Mr.Surinder Sheoran, Advocate
For the Respondent(s) : Mr.Vinay Vohra, CGC

...

**CORAM:JUSTICE SURINDER SINGH THAKUR, JUDICIAL MEMBER
LT GEN DS SIDHU (RETD), ADMINISTRATIVE MEMBER**

...

**ORDER
30.06.2015**

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By means of the present petition, filed under Section 14 of the Armed Forces Tribunal Act, 2007 the petitioner has prayed for the following reliefs:-

- (i) To quash the offending part of the impugned RMB proceedings dated 26.03.2008 (Annexure A-1) as well as the letters dated 13.01.2009 and 12.11.2010 (Annexures A-2 & A-3, respectively) vide which the respondents rejected his claim for disability pension w.e.f. 01.10.2008;
- (ii) To direct the respondents to release the disability element of disability pension to the petitioner @ 50%, against 20% disability w.e.f. 01.10.2008 for life with interest; and
- (iii) To issue any other appropriate order or direction which the Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The facts, giving rise to the present petition may be noticed in brief.

3. The petitioner was enrolled in the Army w.e.f. 29.07.1985 and was discharged from service w.e.f. 30.09.2008 on completion of 23 years and 64 days of service under Army Rule 13(3) III(iii) i.e. discharged due to non-recommendation of retention in service by OC Unit in public interest in LMC H-2 (Permanent).

4. During service, the petitioner was admitted in a Military Hospital and was diagnosed as a patient of **“BILATERAL SENSORI NEURAL DEAFNESS”** and was downgraded to Low Medical Category **‘S1H3A1P1E1(Temporary)’** due to the said disease. He was retained in service and was further upgraded to Low Medical Category **H2(P)** w.e.f. 01.12.2005. However, in the year 2008 the Commanding Officer of HQ 33 Corps did not recommend his further sheltered appointment in the Army being LMC H2(P) and the Officer Incharge Records vide letter dated 28.01.2008 issued the discharge order of the petitioner with final date of discharge as 30.09.2008. Being in Low Medical Category, the petitioner was brought before the Release Medical Board (RMB) held on 26.03.2008 (Annexure A-1), which held the disability of the petitioner, assessed as 20% for life, as neither attributable to, nor aggravated by the military service. On consideration, the competent authority rejected the claim of the petitioner for disability pension vide letter dated 13.01.2009 (Annexure A-2) and the appeal, preferred there against, was rejected by the Appellate Authority vide latter dated 28.10.2010 intimation of which was given to the petitioner vide Annexure A-3. Hence the present O.A.

5. The stand taken by the respondents in the written statement is that the claim of the petitioner was rejected vide Annexure R-3, dated 13.01.2009, since the petitioner was not fulfilling the primary conditions laid down in Para 173 of the Pension Regulations for the Army, 1961 (Part-I). The appeal, preferred against the rejection order, was also rejected since the RMB had held the disability of the petitioner as neither attributable to, nor aggravated by Military Service. As per the law laid down by the Hon'ble Supreme Court in Civil Appeal No.5678 of 2009 arising from SLP (c) No.23727 of 2008, titled Secretary, Ministry of Defence & others vs. Late Sep Damodaran AV & others the opinion rendered by a Medical Board, which is an expert body, is required to be given due weightage, value and credence, therefore, rejection of disability pension claim of the petitioner by the EME Records and the Appellate Committee is just, legal and in accordance with law. The O.A. deserves to be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. In support of the claim made in the present O.A., the learned counsel for the petitioner placed reliance on the following decisions of this Tribunal:-

- (i) **OA No.343 of 2010, titled JC-372372A Ex Subedar Sajjan Singh vs. union of India, decided on 22.11.2010;**
- (ii) **OA No.197 of 2010, titled Ex Hav Narinderjit Singh vs. Union of India & others, decided on 23.05.2011; and**
- (iii) **OA No.148 of 2010, titled Satya Narayan vs. Union of India & others, decided on 27.03.2015.**

8. On consideration of the present case in the light of the aforesaid decisions, we find that the disabilities suffered by the petitioners therein were also opined to be neither attributable to, nor aggravated by Military Service and they were not recommended for sheltered appointment and were discharged from service. Those petitioner had also claimed same/ similar relief(s) for grant of disability pension to them with benefit of rounding off, admissible under the rules. In the cases of Sattan Singh vs. Union of India (supra) and Satya Narayan vs. Union of India & Ors (supra), the disabilities suffered i.e. “Bilateral Mixed Hearing Loss” and “Neural Hearing Loss (RT) Ear” by the petitioners were akin to the one suffered by the petitioner herein. OA Nos.343 of 2010 and 197 of 2010 were though allowed on the basis of facts of those cases, OA No.148 of 2010 was allowed keeping in view the decision of the decision of the Hon’ble Supreme Court in **Dharaamvir Singh vs. Union of India & others**, passed in **Civil Appeal No.4949 of 2013 (arising out of SLP (C) No.6940 of 2010**, decided on **21.02.2012**, finding that the Medical Board had not assigned any reason as to why the disease was held as neither attributable to, nor aggravated by the Military Service. A perusal of the Release Medical Board proceedings in this case, which have been placed on record as Annexure A-1, dated 26.03.2008, also indicates that the Medical Board did not assign any reason for holding the disability of the petitioner as neither attributable to, nor aggravated by the Military Service than just to term it to be a constitution disorder.

9. In view of the above, we find that the claim made by the petitioner in the present O.A. is squarely covered by the aforesaid decisions and the O.A. deserves to be allowed.

10. Consequently, this O.A. is allowed. The impugned rejection orders are hereby quashed and set aside. The petitioner is held entitled to disability element of pension w.e.f. 01.10.2008 i.e. the day following the date of discharge of the petitioner from service with benefit of rounding-off to 50%, against the assessed disability of 20%, for life.

11. The respondents are directed to make necessary calculations and disburse payment to the petitioner in this regard within a period of three months from the date of receipt of a certified copy of this order by the learned counsel for respondents, failing which, the amount shall carry interest at the rate of 8% per annum from the date of this order.

12. No order as to costs.

[Justice Surinder Singh Thakur]

[(Lt Gen DS Sidhu (Retd))]

Chandigarh

Dated: 30.06,2015

`bss'

Whether the judgment for reference to be put on internet – Yes/ No