

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A. NO. 35 OF 2017

TUESDAY, THE 28TH DAY OF NOVEMBER 2017/07TH AGRAHAYANA, 1939

CORAM:

HON'BLE MR. JUSTICE BABU MATHEW P. JOSEPH, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

AJAY KUMAR.D.K., EX NK-15394662 K,
S/O C.DIVAKARAN, JAYA BHAVAN,
NATTUVANKAVU, PANACODU P.O.,
ARYNADU, THIRUVANANTHAPURAM – 695 542.

. . . . APPLICANT

BY ADV. SRI. B.HARISH KUMAR

Versus

1. UNION OF INDIA REPRESENTED BY THE SECRETARY
TO GOVERNMENT (DEFENCE),
MINISTRY OF DEFENCE,
NEW DELHI-110 011.

2. THE SENIOR RECORD OFFICER,
SIGNALS RECORDS,
PIN 908770, C/O 56 APO.

. . . . RESPONDENTS

3. THE DIRECTOR GENERAL,
CONTROLLER OF DEFENCE ACCOUNTS,
(PENSION), ALLAHABAD,
U.P. – 211014.

BY ADV. SRI. SUBASH V.N., CENTRAL GOVERNMENT COUNSEL

ORDER

VAdm M.P.MURALIDHARAN, MEMBER (A)

1. The Original Application has been filed by Ajay Kumar DK., Ex Naik No. 15394662K, seeking disability pension with the benefit of rounding off.

2. Smt. Renju K.R., representing the learned counsel for the applicant, submitted that the applicant was enrolled in the Army on 24 February 1996 and was discharged from service on 31 August 2014. The learned counsel further submitted that on completion of his basic training, the applicant had been posted to various units, including in field areas. In 2013, while serving in a modified field area, the applicant developed the ailment of Primary Hypertension. The Release Medical Board held at the time of discharge of the applicant, assessed him to have the disability of Primary Hypertension at 30% for life. The Board, however, held that the disability was neither

attributable to nor aggravated by military service (Annexure A1).

3. The learned counsel further submitted that the disability pension claim of the applicant was rejected by the competent authority. The First Appeal preferred by the applicant was also rejected by the Appellate Committee, holding the disability as neither attributable to nor aggravated by military service in terms of Para 43 of Chapter VI, Guide to Medical Officers 2002, amendment 2008 (Annexure A3). The Second Appeal preferred by the applicant was also rejected by the Second Appellate Committee on Pension (SACP) (Annexure A5). The learned counsel further submitted that as the applicant was fully fit at the time of his enrolment, in keeping with the Entitlement Rules for Casualty Pensionary Awards and the observations of the Honourable Apex Court in **Dharamvir Singh vs. Union of India and Others, (2013) 7 SCC 316**, the disability of the applicant should have been held

as attributable to or aggravated by service. The learned counsel therefore prayed that the applicant be granted disability pension with the benefit of rounding off.

4. The respondents in their reply statement submitted that the applicant, who was enrolled in the Army (Corps of Signals) on 24 February 1996, was discharged from service on 31 August 2014, under Army Rule 13(3)III(v) read in conjunction with sub Rule 2A, in permanent Low Medical Category for the disability of Primary Hypertension. The Release Medical Board held at the time of discharge of the applicant, assessed him to have the disability of Primary Hypertension (1-10) at 30% for life, but held it as neither attributable to nor aggravated by military service (Annexure R2). Therefore, the disability pension claim of the applicant was rejected by the competent authority (Annexure R3). The subsequent appeals preferred by the applicant against rejection of disability pension claim was considered by the

Appellate Committees and rejected (Annexures R6, R8).

5. The respondents further submitted that the Honourable Apex Court in **Ex Sapper Mohinder Singh vs. Union of India, Civil Appeal No.164 of 1993**, had held that the Medical Board is an expert body and its opinion is to be given due weight, value and credence. The respondents also submitted that for grant of disability pension, in accordance with Regulation 81 of the Pension Regulations for the Army, 2008, the disability should be either attributable to or aggravated by Military Service and should be assessed at 20% or over. Since the applicant's disability was held as neither attributable to nor aggravated by Military Service, he was not entitled to any disability pension. Further, since the applicant was not granted any disability pension, there cannot be any rounding off benefits.

6. Heard rival submissions and perused records.

7. It is not disputed that the applicant was discharged from service with effect from 31 August 2014

under Army Rule 13(3)III(v) read in conjunction with sub Rule 2A. The Release Medical Board assessed the disability of Primary Hypertension of the applicant at 30% for life, but considered it as neither attributable to nor aggravated by Military Service. The initial claim of the applicant as well as his statutory appeals for grant of disability element of pension were rejected by the competent authority.

8. Since the applicant was discharged from service in August 2014, Pension Regulations for the Army, 2008 would be applicable. Regulation 81 specifies primary conditions for grant of disability pension of which Sub-regulation (b) amplifies the aspect of attributability/aggravation by military service and being relevant is re-produced below:

“(b) The question whether disability is attributable to or aggravated by military service shall be determined under the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2008 as laid down in APPENDIX -IV of

these Regulations.”

9. The aspect of attributability or aggravation of a disability has to be decided under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. Rules relevant in deciding the issue are re-produced below:

“4. Invalidment from Service :

a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

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5. Medical Test at entry stage:

The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant diseases. Besides, certain hereditary, constitutional and congenital diseases

may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not *per se* establish attributability to or aggravation by military service.

7. Onus of proof:

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/ release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability :

(a)

(b) Diseases :

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously :

(a) that the disease has arisen during the period of military service; and,

(b) that the disease has been caused by the

conditions of employment in military service.

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11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High Altitudes etc.”

10. It is observed that the Second Appellate Committee considered the disability of the applicant viz., Primary Hypertension as idiopathic in origin and per se, not attributable to service. Since the onset of the ID was while the applicant was serving in a modified field area and after onset he continued to serve in peace stations thereafter, it was also considered as not aggravated by service in terms of Para 43 of Chapter VI, Guide to Medical Officers (Military Pensions) 2002, amendment 2008.

11. Para 43 of Chapter VI of Guide to Medical

Officers (Military Pensions) as amended in 2008 indicates that "in case of Primary Hypertension, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered." It further adds that "however in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in field areas, HAA, CIOPS areas or prolonged afloat service." It therefore emerges that while Primary Hypertension can be considered as aggravated if it occurs while serving in field areas, it also emerges that there are cases where disease has been reported after long and frequent spells of service in field and operational areas. In case of the applicant, even though the initial

detection of the disability was in May 2013 while he was serving in a modified field area, it is observed that by then he was put in nearly 17 years of service in the Army and had also served nearly 5 years in field areas. Therefore, in our view, in keeping with the clinical aspects as specified in Guide to Medical Officers (Military Pensions), the applicant's service in field areas could have contributed to Hypertension.

12. It is also observed that the Honourable Apex Court in **Union of India and Another vs. Rajbir Singh, (2015) 12 SCC 264**, also considered other connected Appeals which included Civil Appeal Nos.5840 of 2011 and 5819 of 2012, both of which pertain to Primary Hypertension of the respondents therein. In both the cases, the Honourable Apex Court held that the respondents therein were eligible for disability pension. Further in the same judgment, the Honourable Apex Court referring to its decision in **Dharamvir Singh** (supra)

observed thus:

“15. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces”

13. In our view therefore, based on the observations above and in keeping with the principles enunciated by the Honourable Apex Court in **Rajbir Singh** (supra), the disability of the applicant viz., Primary Hypertension should have been held as attributable to/aggravated by military service making him eligible for grant of disability element of pension at 30% at the time of his discharge from service.

14. In view of the foregoing, the Original Application is disposed of directing the respondents to sanction and pay to the applicant, disability element of pension at 30% from the next date of his discharge from service ie with

effect from 01 September 2014. The respondents are also directed to extend the benefit of rounding off of the disability element to the applicant in accordance with Regulation 98(c) of the Pension Regulations for the Army, 2008, in keeping with the directions of the Honourable Apex Court in **Union of India vs. Ram Avtar, Civil Appeal No.418 of 2012** and connected cases. The respondents are further directed to disburse monetary benefits along with arrears as indicated above to the applicant within a period of four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry simple interest at the rate of 8% per annum.

15. There will be no order as to costs.

16. Issue free copy to the parties.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

Sd/-
JUSTICE BABU MATHEW P. JOSEPH
MEMBER (J)

(true copy)