

SEE RULE 102(1)**ARMED FORCES TRIBUNAL, KOLKATA BENCH****O. A. NO.17/2016****THIS 13th DAY OF JUNE, 2016****CORAM****HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)****HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

APPLICANT(S) Ex-CPOR Ajay Kumar Singh,
Son of Shri Ramnarayan Singh,
Singh Bhavan, Mohanpur, Dhalipara
near Sanimandir, P.O. Sewlitenipara
Barrackpore, Kolkata.
Pin – 700 121.

-versus-

RESPONDENT(S)

1. The Union of India,
service through Secretary,
Ministry of Defence, Sena Bhawan
Defence Headquarters, Army
Headquarters, New Delhi, Pin -110 105.
2. Chief of Naval Staff for Principal Director
of Pay & Allowance, Integrated HQ,
MOD (Navy), D-II Wing, Sena Bhawan,
New Delhi – 110 011.
3. Integrated Headquarters, MOD (Navy)
Director of Pay & Allowances, D-II Wing
Sena Bhawan, New Delhi – 110 011.
4. Secretary, Department of Ex-Servicemen
Welfare South Block, New Delhi, C.G.D.A.,
Principal Controller of Defence Accounts Pension,
Draupadi Ghat, Allahabad -211 014.
5. The Commodore, for Staff Officer Pension,
Bureau of Sailors, Cheetah Camp, Mankhurd,
Mumbai – 400 088.

For the applicant(s) : Miss. Manika Roy, Advocate**For the respondent(s) : Mr. Dipak Kumar Mukherjee, Advocate****ORDER****PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)**

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 claiming disability pension.

2. The facts in brief are that the applicant was enrolled in Indian Navy on 04.07.1990. He was discharged from Naval service on 31.07.2013 after rendering 23 years and 28 days of qualifying service. At the time of discharge the Release Medical Board (RMB) opined that he was suffering from Diabetes Mellitus Type-II which was neither attributable nor aggravated by Naval service and assessed 20% disability for life. Applicant's claim for disability pension was rejected on 17.06.2013. Being aggrieved the applicant preferred first appeal on 12.08.2013 which was rejected by the respondents' authority on 12.05.2014. Being dissatisfied the applicant preferred second appeal on 07.08.2014 which was also rejected on 11.09.2015. Hence the instant O.A.

3. The respondents have opposed the case by filing affidavit-in-opposition wherein they have stated that as per Regulation 101 of Navy Pension Regulation 1964 for being entitled to disability pension, the disability should be attributable to Naval service, but in the instant case disability is neither attributable to nor aggravated by naval service. Therefore, the applicant is not entitled to disability pension.

4. We have heard the Id. counsel for the parties and perused the records of the case. Indisputably, the applicant was enrolled in the Indian Navy on 04.07.1990 and was discharged from service on 31.07.2013 after completion of his terms of engagement and was suffering from DM Type-II. He was denied disability pension on the ground that it was neither attributable to nor aggravated by naval service. It is also not in dispute that at the time of his enrolment in the year 1990 he was medically and physically examined and found fit as per prescribed medical standards and was not suffering from any disease including the disease in question i.e. "TYPE 2 DIABETES MELLITUS" and at the time of

discharge his disability was found @20% for life which is the bare minimum in terms for getting disability pension as per Regulation 101 of Navy Pension Regulation 1964. The Medical Board has rejected the claim for disability pension only on the ground that the disability was not attributable to nor aggravated by naval service.

5. Ld. counsel for the applicant submitted that 'Diabetes' is an internal disease/ailment due to service conditions, dietary habits and most importantly is not constitutional in nature. The applicant had served in Navy wherein 'Diabetes' gets aggravated due to food and thus at least the applicant's ailment should have been treated as aggravated due to military service. It was further contended whenever there is any causative factors of stress and strain of naval service or environmental hazardous service or dietary compulsions, diseases like the "Diabetes' certainly cannot be construed as a Metabolic Genetic Constitutional Disease and he was in SHAPE-1 category at the time of enrolment. The onset of diabetes took place only in 2013 by which time he had put in 23 years' of service. Therefore, in the fitness of things the applicant deserves to be granted disability pension and since it has been quantified @20% for life it needs to be increased @50% by Broad Banding system as per Govt. of India letter dated 31.01.2001.

5. This Bench had decided similar case In O. A. No. 62/2014 [Subedar Rajendra Kumar Singh Vs. U.O.I. &Ors.] allowing disability pension to that applicant placing its reliance upon the decisions of Hon'ble Apex Court in Dharamvir Singh vs. Union of India (2013 Vol.VII SCC 316) ; Union of India vs. Rajbir Singh (Civil Appeal No.2904 of 2011) and Union of India vs. Angad Singh Titaria (2015 SCC OnLine SC 181).

6. Considering the facts of the case in the light of Pension Regulations for the Navy, 1964 the Entitlement Rules as per its Appendix - V in particular Rule 8 and the principles of law settled by the Hon'ble Apex Court in its various pronouncements, we are of the considered opinion that the applicant has been wrongly denied benefit of disability pension.

18. For the reasons mentioned above, the O. A. is allowed. It is held that the petitioner is entitled to 20% of disability pension which is to be rounded off from 20% to 50% according to the Govt.'s decision dated 31.01.2001. The petitioner is also entitled to arrears with effect from 31.07.2013 i.e. the date of discharge along with interest @ 06% p.a. The order be implemented within three months from the date of receipt of the copy of this order. No order as to costs.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice N. K. Agarwal)
Member (Judicial)