

ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

OA No. 38 of 2019 with MA No.27 of 2019

Col Gour Chandra Dey (Retired)
Versus
Union of India and Ors

... Applicant

... Respondents

For Applicant : Mr Aniruddha Datta, Advocate
For Respondents : Mr Ajay Chaubey, Advocate

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HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

ORDER
5.5.2022

1. The Applicant filed this OA to call upon the records relating to the Impugned Orders dated 19.8.2014, 18.10.2017 and 24.9.2018 and direct the Respondents to grant Disability Pension w.e.f. 1.11.2014 for life with benefits of Broadbanding from 50% to 75% and issue Corrigendum PPO.
2. The Applicant was commissioned in the Indian Army on 11.6.1988 and discharged from service on 31.10.2014 on superannuation after rendering 26 years 3 months and 7 days of qualifying service. The Applicant submits that during the course of his service he suffered from Obesity, Primary Hypertension and Impaired Glucose Tolerance. The Release Medical Board held on 6.5.2014 at MH Panagarh recommended him to be released from service in Low Medical Category as SHAP2(P)E.

The Composite Assessment was assessed as upto 50% for life. The Applicant submits that the Disability, "Primary Hypertension" was initially observed to be aggravated by service, but at the time of confirmation, all the aforesaid disabilities were conceded to be Neither Attributable to Nor Aggravated by military service. The Applicant submits that he is in receipt of Service Pension but the Disability Element of Pension was denied by the Respondents vide letter No.13016/IC-47872N/A-16/MP-6(B)/405/2014/AG/PS-4(IWP-II) dated 19.08.2014 on the ground that the disabilities were neither attributable to nor aggravated by military service. The Applicant preferred 1st Appeal on 21.2.2017 for grant of Disability Element of Disability Pension but the same was rejected by the 4th Respondent vide letter dated 18.10.2017 stating that the IDs are neither attributable to nor aggravated by service. Thereafter the Applicant preferred Second Appeal on 7.12.2017 which was also rejected by the 4th Respondent vide letter dated 24.9.2018. Aggrieved by the action of the Respondents, the Applicant filed this Application seeking the relief as prayed for.

3. The Respondents admit that the Applicant was commissioned in the Indian Army on 11.6.1988 and retired from service on 31.5.2014 on reaching the age of superannuation. The Applicant was placed in Low Medical Category and the Release Medical Board held on 17.5.2014 assessed the disabilities, "Primary Hypertension" @ 30%, "Impaired Glucose Tolerance"@ 15-19% and "Obesity"@ 1-5%, composite @ 40% to 50% for life and declared the IDs as neither attributable to nor

aggravated by military service. The First Appeal dated 21.2.2017 and Second Appeal on 7.12.2017 of the Applicant was rejected by the 4th Respondent vide letters dated 18.10.2017 and 24.9.2018. As the Applicant's disabilities have been regarded to be neither attributable to nor aggravated by military service by the RMB and the First & Second Appellate Committee, the Applicant is not entitled to grant of Disability Element of Disability Pension. Hence, the Respondents pray to dismiss the OA being devoid of merits.

4. The Applicant filed a Rejoinder wherein he submits that the disabilities arose while he was in active service and hence should be treated to be attributable to service since he was in acceptable medical category at the time of his commissioning and was in low medical category due to the disabilities at the time of his retirement.

5. We have heard the arguments of the Learned Counsels for the Applicant as well as the Respondents and also carefully perused the material placed on record.

6. It is not disputed that the Applicant was commissioned in the Indian Army on 11.6.1988 and retired from service on 31.5.2014 on reaching the age of superannuation after rendering 26 years 3 months and 7 days of qualifying service. The Applicant was placed in Low Medical Category and the Release Medical Board held on 17.5.2014 assessed the disabilities, "Primary Hypertension" @ 30%, "Impaired Glucose Tolerance" @ 15-19% and "Obesity" @ 1-5%, composite @ 40% to 50%

for life and declared the IDs as neither attributable to nor aggravated by military service.

7. The issues which need to be addressed before deciding the outcome of this application are two-fold:-

(a) First – Is the Applicant eligible for Disability Pension?

Para 4 of Entitlement Rules for Casualty Pensionary Award, 1982, states as under:-

“Invaliding from service is a necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service”.

From the above, it is clear that the Applicant who retired from service in a Low Medical Category than during commissioning is deemed to be Invalided out of Service and is consequently eligible for Disability Pension as his Disability is more than 20%.

(b) Second – Attributability of Diseases suffered during military service?

Any disability contracted during military service will be presumed to be attributable to military service and unless note of disability was endorsed during the enrolment medical process which has been clarified by the Hon'ble Supreme Court judgement in Dharamvir Singh vs UoI passed in 2013.

8. The Applicant was found to be fully fit during his commissioning on 11.6.1988 without any medical deficiencies. Release Medical Board held on 17.5.2014 assessed the disabilities, "Primary Hypertension" @ 30%, "Impaired Glucose Tolerance" @ 15-19% and "Obesity" @ 1-5%, composite @ 40% to 50% for life and declared the IDs as neither attributable to nor aggravated by military service. We find that the issue regarding the attributability of his disablement due to ID is no more *res integra* as the Honourable Supreme Court in its judgement in the case of Union of India & Anr vs Rajbir Singh in JT 2015 (2) SC 392 summed up as follows:

"11. From a conjoint and harmonious reading of Rules 5, 9 and 14 of the Entitlement Rules (Supra) the following guiding principles emerge :-

(i) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noticed or recorded at the time of entrance;

(ii) In the event of being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;

(iii) The disease which has led to any individual's discharge or death will ordinarily be deemed to have arisen in service, no note of it was made at the time of the individual's acceptance for military service; and

(iv) If medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated".

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9. We also find that the issue relating to grant of rounding off benefit of the Disability Element of Disability Pension in such cases is also no longer *res integra* in view of the order passed by the Honourable Supreme Court in Union of India & Ors vs Ram Avtar in Civil Appeal No.418 of 2012, decided on 10.12.2014 whereby the Honourable Supreme Court has directed the respondents to grant the said benefits also to those personnel who have not only been invalided out from service but to other categories also. The Government of India has also decided to implement the aforesaid direction of the Honourable Supreme Court to grant the benefit of 'broadbanding' of the disability element of pension to the Armed Forces Personnel, who have retired or been discharged on completion of the terms of engagement with disability aggravated by or attributable to military service from the date mentioned in the respective Court orders, which has been communicated by the Under Secretary to the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare D(Pension/Legal) vide letter F.No.3(11)2010-D (Pen/Legal) Pt.V dated 18.4.2016. Relevant portions of the letter are set out below:

"(a) The Hon'ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeals tagged with Civil Appeal No.418 of 2012 filed by the Union of India vs Ram Avtar challenging grant of broadbanding of disability element by AFTs to Armed Forces personnel other than invalided out from service. The Hon'ble Supreme Court ruled that an Armed Force Personnel retired on completion of tenure with disability aggravated by or attributable to Military Service is eligible for broadbanding of disability personnel element.

(b) Accordingly, approval of competent authority is hereby conveyed for implementation of Court/AFTs orders granting broadbanding of disability element to an Armed Forces

personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to Military Service from the date mentioned in respective Court orders."

10. After consideration of above facts and circumstances, we are of the considered opinion that the Applicant is entitled for grant of Disability Element of Disability Pension rounded off to 50% for life for IDs, Primary Hypertension @ 30% and Impaired Glucose Tolerance @ 15-19%. The ID, Obesity @ 1-5% cannot by any stretch of imagination be attributable to military service and hence stands discounted.
11. In view of the foregoing, the O.A. is allowed. The Respondents are directed to issue Corrigendum PPO and pay Disability Element of Disability Pension rounded off to 50% with effect from the date of his discharge, i.e. 1.11.2014 within three months from the date of receipt of this Order failing which the arrears will carry 8% interest per annum from the date of this Order. The arrears will, however, be limited to three years prior to filing of this O.A. in accordance with the principles laid down in the judgement of the Hon'ble Apex Court in UoI & Ors vs Tarsem Singh, reported in (2008) 8 SCC 648.
12. No order on cost.

LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)
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JUSTICE ANJANA MISHRA
MEMBER(J)