

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

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OA 2577 of 2013

Ranjit Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Bhim Sen Sehgal, Advocate
For the Respondent(s) :	Mrs. Geeta Singhwal, Sr. PC.

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Lt Gen (Retd) HS Panag, Administrative Member.**

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**ORDER
15.11.2013**

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This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the for the grant of disability pension for 50% disability after giving the benefit of “rounding off” from the date of his discharge.

The brief facts of the case are that the petitioner was enrolled in the Army on 15-09-1973 in a medically fit condition in Medical Category ‘AYE. During tenure of his service he was posted at various places including high altitude as well as the operational areas. In the year 1992 while on duty he suffered extreme pain in the chest. He was evacuated to Military Hospital, where he was diagnosed as a case of Hypertension and was down-graded to low medical category CEE(T). He was invalided out of military service on 30-04-1994 after rendering 23 years of service. Prior to discharge he was brought before the Invaliding Medical Board and his disability was assessed at 30% .

It is alleged in the petition that the petitioner was not handed over any medical papers nor the copy of Invaliding Medical Board proceedings. After discharge he was granted service pension by the PCDA (P) vide Annexure P-3. His claim for grant of disability pension was rejected by the PCDA (P) on the ground that his disability was found neither attributable to nor aggravated by service. Against rejection of his claim for disability pension, he filed an appeal dated 13-11-1995 (Annexure P-4), which was forwarded to

CCDA P) by the Artillery Records vide letter dated 02-12-1995, but no response was given. He made a number of representations to the authority concerned, but of no avail. Faced with the situation and having no other option, he filed the present application for grant of disability pension.

On notice having been issue, respondent Nos. 1 to 4 filed the reply stating therein that initially the petitioner was enrolled in the Territorial Army on 16-10-1970 and was discharged on 15-09-1973 and re-enrolled in the regular Army on the same date. At the time of his Annual Medical Examination on 19-12-1991, the petitioner was detected to be a case of high blood pressure and was referred to the Command Hospital, Western Command, Chandimandir, where he was diagnosed as a case of “**Mild Hypertension**” and was downgraded to low Medical Category CEE (T) till July 1992. On subsequent reviews, his medical category was changed to BEE (Permanent) w.e.f. 07-07-1993 and was diagnosed as a case of **Hypertension 401**.

In para 2 of the reply, it is stated that the discharge order of the petitioner was issued by the Artillery Records vide letter dated 29-10-1993. Prior to discharge, he was brought before a duly constituted Release Medical Board on 1-10-1993. As per Release Medical Board proceedings (Annexure R-1), the disability of the petitioner was held to be aggravated by military service and his disablement was assessed at 30% for life. Accordingly, he was discharged from service w.e.f. 01-05-1994. After discharge, the petitioner's claim for grant of disability pension was submitted to PCDA (P), but the same was rejected on the ground that the disability “**Mild Hypertension**” suffered by the petitioner was neither attributable to nor aggravated by military service. Therefore, no disability pension is admissible to him under the rules.

In para 5 of the reply, the stand of the respondents is that as per para 173 of Pension Regulations for the Army, 1961 (Part-1) disability pension is granted to an individual; provided his disability is viewed either attributable to or aggravated by military service and

percentage of disablement is assessed at 20% or above. Since the petitioner's claim was rejected by the PCDA (P), Allahabad and his appeal was also rejected by the Ministry of Defence, he is not entitled for disability pension. As such the present petition is liable to be dismissed.

We have heard the learned counsel for the parties and carefully perused the documents on record.

In the course of arguments, the learned counsel for the petitioner submits that at the time of his enrolment in Army service, the petitioner was found medically fit in all respects and no Note regarding the aforesaid disease was recorded in his medical record. The disease from which he was found to suffer had arisen in the year 1991 after completion of 18 years of service. Therefore, as per rule 14 (b) of Entitlement Rules, 1982, a disease which has led to an individual's discharge or death will be deemed to have arisen in service if no Note of it was made at the time of the individual's acceptance for military service. He further contended that the petitioner's disability was found to be aggravated by military service and its percentage was assessed at 30% for life by the Release Medical Board. According to the counsel, the conditions for grant of disability pension have been laid down in paragraph 173 of Pension Regulations for the Army, 1961 (Part -1). As per this paragraph, a disability pension consisting of service element and disability element is granted to an individual, who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and its percentage is assessed at 20% or over. He also argued that in similar matters this Bench has already granted the relief to the army personnel in number of cases and he placed reliance on the two decisions of this Bench, one dated 11-11-2010 rendered in **OA No. 762 of 2010 (Nirmal Singh vs. Union of India & others)** and another dated 22-11-20-2010 in **OA No. 793 of 2010 (Bata Singh Vs Union of India & others)**

On the other hand, the only stand of the respondents is that the petitioner was denied disability pension because his claim was

rejected by the P CDA (P), Allahabad on the ground that his disability was found neither attributable to nor aggravated by service and the appeal preferred against the rejection was also dismissed by the higher authority.

The admitted position is that the petitioner was enrolled in the Army in September 1973 in a medically fit condition. He was discharged from service on 01-05-1994 after rendering more than 20 years of service. The disease –**Mild Hypertension** from which he was found to suffer was detected in the year 1992 when he had already completed more than 18 years of service. He was found fit in all respects at the time of entry into service. No note regarding the aforesaid disease was recorded in his medical record. In the Release Medical Board proceedings (Annexure R-1), it has clearly been opined by the Medical Board that the cause of disability is stress and strain of military service. This opinion leaves no manner of doubt that the disease from which the petitioner was found to suffer has arisen during tenure of his service. As per Release Medical Board proceedings, the disability suffered by the petitioner was held to be aggravated by military service and its percentage was assessed at 30% for life and at time of discharge he was in low medical category. Thus, the petitioner fulfils all the conditions laid down in paragraph 173 of Pension Regulations for the Army 1961 (Part-1) for grant of disability. He was denied disability pension because his claim was rejected by the PCDA (P), Allahabad vide letter dated 06-07- 1995 (Annexure R-2) stating that his disability was neither attributable to nor aggravated by military service. This fact is factually wrong. In the Release Medical Board proceedings (Annexure R-1), the petitioner's disability was held to be aggravated by military service by the Medical Board and in the relevant column of Opinion of the Medical Board its cause has been shown to be stress and strain of military service. It is now settled principle of law that the PCDA (P) has no power to alter the findings of the Release Medical Board and this view was taken by this Bench Bench in **OA No. 481 of 2011 (Dharam Pal Singh Vs Union of India and others)**, decided on 10-10-2011.

The controversy involved in the case stands already settled in view of the various decisions of this Bench viz. **OA No. 1749 of 2011 (Ex. MWO Lal Chand Vs. UOI & Ors)**, decided on 09-11-2011, OA No. 477 of 2011 (**Ram Kanwar Vs Union of India & Ors**), decided on 29-07-2011, and OA No. 244 of 2011 (**Birender Kumar Vs. UOI & Ors**), decided on 14-11-2011. Besides this, the decisions of this Bench referred to above and relied upon by the learned counsel for the petitioner do also support the petitioner's case fully.

Thus, having regard to the facts and circumstances of the case, we are of the view that the decision of the PCDA (P) in rejecting the petitioner's claim for grant of disability pension was illegal and arbitrary. Since the petitioner fulfils all the eligibility conditions laid down in paragraph 173 of Pension Regulations for the Army, 1961 (Part-1), he is held entitled to get disability pension @ 30% from the date of discharge and 50% disability w.e.f. 01-01-1996 after giving the benefit of "rounding off" in view of Govt. of India, MoD letter dated 31-01-2001 as well as the decision dated 31-03-2011 of Hon'ble Supreme Court of India passed in C.A. No. 5591 of 2006 (**KJS Buttar Vs Union of India and others**) read with judgment of this Tribunal dated 22-12-2011 passed in OA No. 1370 of 2011, **Labh Singh Vs. Union of India and others** and also the judgment of this Bench dated 03-08-2012 passed in bunch of cases led by **OA No. 1960 of 2012 Ved Parkash Vs. Union of India and others.**"

Accordingly, this application is allowed. The respondents are directed to release the disability pension for 30% disability from

the date of discharge i.e. 01-05-1994 and 50% disability with effect from 01-01-1996 after giving the benefit of “rounding off” in favour of the petitioner within a period of six months from the date of receipt of this order. However, the arrears will be restricted to three years prior to the date of filing of this application with interest @ 10% per annum. If the arrears is not paid within the stipulated time, then the petitioner will be entitled to interest @ 10% on the principal amount till actual payment.

(Justice Vinod Kumar Ahuja)

(Lt Gen (Retd) HS Panag)

15.11.2013
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Whether the judgment for reference to be put on Internet – Yes/No