

IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,
GUWAHATI.

OA 38/2017

P R E S E N T

HON'BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON'BLE LT GEN C.A. KRISHNAN, MEMBER (A)

No. 14230731H Ex-Nk(TS) HM Kom
Vill-Senpangjar
PO-Moraing
Dist-Churachandpur, Manipur

..... **Applicant**
Legal practitioner for the applicant
Mrs. Rita Devi
Mr. AR Tahbildar

- Versus -

1. Union of India,
Represented by the Secretary
Ministry of Defence,
Sena Bhawan,
New Delhi-11
2. The Records Signals
PIN (ARMY)-90112,
C/o-56 APO
3. Additional Directorate General,
Personnel Services, PS-4(d)
Adjutant General's Branch
IHQ of MOD (Army), DHQ,
PO-New Delhi
4. The Principal Controller of Defence
Accounts (Pension), Allahabad
PIN-211014
Uttar Pradesh

..... **Respondents**
Legal practitioner for the
Respondents
Mr. D.C. Chakraborty, CGSC

Date of Hearing : 20.02.2018
Date of Judgment & Order : 23.02.2018

ORDER

Per Lt Gen C.A. Gen Krishnan, Member (A)

This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has claimed disability pension.

2. In, brief, the petitioner was enrolled in the Indian Army on 12.09.1979 and discharged on 01.01.1999 in Low Medical Category as a case of "SN DEEFNESS (BOTH EAR) 389, V-67", the invaliding disease declared as neither attributable nor aggravated by military service.

3. Learned counsel for the applicant submits that the applicant was enrolled in the Indian Army after a thorough medical examination and finding him fit in all respect. In due course, he was promoted to the rank of Naik(TS). During the service period spanning more than 20 years, he served in peace areas as well as Field and High Altitude areas to the satisfaction of all concerned. He was diagnosed with "SN DEEFNESS (BOTH EAR) 389, V-67", at 92 Base Hospital in October 94. The Release Medical Board held at Command Hospital, Lucknow on 07.04.99 had assessed the applicant's disability at 40% for a period of two years and recommended his release from the service. He was due for re-survey medical board in 2001, but he was not called by the authorities for undergoing the re-survey. The applicant further submits that under RTI Act, he has got the relevant medical documents on 04.04.2017 and came to know through Zila Sainik Board that the Govt. has taken a policy decision to grant disability pension for people like him based on which he had submitted an appeal dated 06.04.2017 to Records Signals. However, the appeal was not considered stating that it was preferred at belated stage. The PCDA(P) Allahabad vide their letter dated 29.03.2000 intimated that since the disability was neither attributable nor aggravated by military service as it was constitutional in nature, he is not entitled to disability element.

4. Learned counsel for the applicant further submitted that the case is covered by Hon'ble Supreme Court Judgment in ***Dharamvir Singh Vs. Union of India & Ors and Union of India & Anr Vs. Rajbir Singh*** as well as the Full Bench of AFT, Principal Bench Order dated 01.12.2017 in OA 1439 of 2016 ***Ex Sgt. Girish Kumar Vs. Union of India & Ors***. He also submitted that having been enrolled in regular Army after finding the person physically and mentally fit, the disability at the time of invaliding cannot be regarded as non attributable to medical service.

5. Learned counsel for the respondents while not denying the fact that the case is covered by the Judgments cited by the learned counsel for the applicant stated that the disability pension has not been granted as the invaliding disease was found to be neither attributable nor aggravated by the Medical Board. The individual is now claiming disability pension after a long gap of about 20 years.

6. We have heard Mrs. Rita Devi learned counsel appearing for the applicant and Mr. D.C.Chakraborty, learned CGSC appearing for the respondents. Also we have gone through the records and submissions made by both the parties.

7. In the Judgment dated 02.07.2013 in ***Dharamvir Singh Vs. Union of India & Ors***, in Civil Appeal No. 4949 of 2013, the Hon'ble Supreme Court observed –

31. In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of the appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service....."

8. The applicant is pleading for disability pension as per law settled by Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors (Supra)*** and Hon'ble Supreme Court Judgment in Civil Appeal No. 2904 of 2001 in ***Union of India & Anr Vs. Rajbir Singh*** dated 13th Feb 2015. Full Bench of AFT, Principal Bench Judgment dated 01st December, 2017 passed in OA-1439 of 2016 in ***Ex. Sgt. Girish Kumar Vs. Union of India & Ors*** and other related matters has held as under:

Conclusions:-

55. *After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability pension on the ground of delay in filing application(s) by the individual/applicant (s) we conclude thus:-*

(i) *Armed Forces personnel who have been invalided/ superannuated/completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996 (including the applicants) will be entitled to broad banding of disability/war injury element. Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement;*

(ii) *Armed Forces personnel who were premature retirees/ proceeded on premature discharge with disability will be entitled to broad banding of disability/war injury element of pension with effect from either 01.01.2006 or the date of their retirement. There will, however, be no restriction of date for premature retirees to be eligible for disability/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.*

The other salient conclusions are:-

(a) *Restriction of arrears can be applied to applicant(s) wherein he is not held entitled to disability/war injury element of pension, and such entitlement only gets established post adjudication by AFT/Courts; however, exception apart where the vested right of an individual is held to be denied the issue will be decided by AFT Benches on its own facts.*

(b) *All premature/voluntary retirees will remain eligible only for disability/war injury element of pension, their service element will need to be earned independently, based on years of service rendered and held as qualified for service pension.*

9. Having carefully considered the submissions made by both the parties and perused the documents, in the light of the above judgments of the Hon'ble Supreme Court as well as the Hon'ble Principal Bench of Armed Forces Tribunal, we conclude that the applicant having been discharged from service owing to the disease viz "SN DEEFNESS (BOTH EAR) 389, V-67", with 40% disability is eligible for disability pension. The applicant is also eligible for broad banding.

10. In sum, the application is allowed to the extent that the respondents are directed to grant the applicant disability pension broadbanded from 40% to 50%. The arrears, however, will be restricted to a period of three years before 21.07.2017 i.e. the date of filing of the O.A. 38 of 2017 as directed vide order dated 20.02.2018 in MA-32 of 2017 by this Regional Bench of AFT. The respondents will pay the arrears to the applicant within a period of three months from today, failing which the applicant shall be entitled to 9% interest per annum over the arrears.

11. Original Application is accordingly allowed as indicated above.

12. There will be no order as to costs.

13. Mr. D.C. Chakraborty, learned CGSC appearing for the respondents made an oral prayer for grant of leave to appeal to the Hon'ble Supreme Court under Section 31 of the AFT Act, 2007. Since the order does not involve any point of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A)

MEMBER (J)

Kalita