

**RESERVED**  
**Court No.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No 138 of 2019**

Tuesday, this the 02<sup>nd</sup> day of April 2019

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

No. 618095L Ex JWO Ram Nagina Yadav son of Late Shri Chandrika Yadav, R/O A-14, Sec-A, Sainik Vihar, PO-Kunraghat, Gorakhpur, PIN-273008.

.....Applicant

Ld. Counsel for: **Shri Ashish Kumar Singh**, Advocate  
the Applicant

Versus

1. Union of India and others through The Secretary Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Integrated HQ of MoD (Air Force), DHQ, PO-New Delhi-110011.
3. Officer Incharge, Directorate of Air Veterans, Subroto Park, New Delhi-110010.

..... Respondents

Ld. Counsel for the : **Shri Shyam Singh**  
Respondents Central Govt Counsel.

## **ORDER**

### **“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-

- (a) *To quash the findings of RMB and the letter dt 22.10.2007 and 27.03.2018 with regards to disability pension.*
- (b) *To declare and direct respondents to grant disability pension to the applicant @ 50% for life from date of discharge-30.06.2008, with rounding off benefit alongwith arrears with interest of 10% p.a.*
- (c) *To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (d) *Allow this application with cost.*

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 10 years, 09 months and 25 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 26.03.2019.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 24.04.1973 and discharged from service after rendering more than 35 years of service on 30.06.2008 in low medical category A4G3(P) due to disabilities '(i) Primary Hypertension (ii) DM Type-II (iii) CAD and (iv) Pseudophakia Lt & Cataract Rt Eye'. His

disabilities have been opined to be neither attributable to nor aggravated by military service (NANA) and assessed as 30%, 20%, 30% and 20% respectively. Composite disability for all the aforesaid diseases has been assessed as 50% for life. Claim for disability pension was rejected vide order dated 22.10.2007. Thereafter appeal preferred against rejection of disability pension was not considered due to delay in preferring the appeal and was rejected vide order dated 27.03.2018. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment. He has picked up these diseases due to stress and strain of service. He drew our attention to page 5 of the RMB endorsing with the following remarks:-

*"2. Did the disability exist before entering service? -No.*

*3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry?-No."*

Ld. Counsel for the applicant further pleaded that the applicant was in a fit medical condition, as such, his disabilities should be considered as attributable to and aggravated by military service and disability pension should be granted to the applicant in consonance with the

provisions of Regulation 423 of the Pension Regulations for the Army.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the Release Medical Board (RMB) has opined that the diseases suffered by the applicant are neither attributable to nor aggravated by military service, as such, the applicant has rightly been denied disability pension. He pleaded the O.A. to be dismissed.

5. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

6. The law on the point of grant of disability pension and its rounding off is no more Res Integra. In the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316, while considering the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.

In ***Dharamvir Singh's*** (supra) case, their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. Similar view was expressed by their Lordships of the Hon'ble Supreme Court in the cases of ***Sukhvinder Singh vs. Union of India***, (2014) 14 SCC 364, ***Union of India & ors vs. Angad Singh Titaria***, (2015) 12 SCC 257 and ***Union of India vs. Rajbir Singh***, (2015) 12 SCC 264.

7. In the case in hand, since the Release Medical Board has assessed 50% composite disability for life for all the disabilities and declared them NANA, we find that the crisp and one liner justification given by RMB stating Primary Hypertension, DM Type-II and CAD to be NANA because these are constitutional in origin, is neither convincing nor rational. Hence considering all issues we would like to give benefit of doubt to the applicant for his first disability i.e. primary hypertension and accept it to be aggravated by military service.

8. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of ***K.J.S. Buttar vs Union of India and ors***, (2011) 11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No.

5591/2006, **Union of India & anr vs. K.J.S. Butter** and **Union of India vs. Ram Avtar & ors** (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014).

9. Accordingly, O.A. No. 138 of 2019 is **Partly allowed**. The impugned orders dated 22.10.2007 and 27.03.2018 conveying rejection of claim for disability pension to the applicant are set aside. The disability of primary hypertension @ 30% for life is considered to be aggravated by military service. The respondents are directed to grant disability pension to the applicant @ 30% for life rounded off to 50% for life w.e.f. the date of discharge i.e. 01.07.2008 but due to law of limitation the arrears shall be restricted to three years prior to filing of the present Original Application. The date of filing of the O.A. is 16.11.2018. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the applicant shall also be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : April, 2019

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