

**COURT NO 1**  
**RESERVED**

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

**ORIGINAL APPLICATION No. 28 of 2018**

Tuesday, this the 2<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)"**

Rajendra Prasad, No. 14543095X Hony Nb Sub, son of Shri Shiv Dayal Singh, R/O Vill-Shivpalpur, Post-Alipur Khera, P/S-Bhongaon, Distt-Mainpuri, State-Uttar Pradesh, PIN-205262.

.....Applicant

Ld. Counsel for the : **Shri V.K. Pandey**, Advocate.  
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. OIC, Records, EME Records, Secunderabad, PIN-500021, C/O 56 APO.
3. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (UP).
4. Centralized Pension Processing Centre (CPPC) through its Chief Manager, State Bank of India, Chandni Chowk Branch Premises, 2<sup>nd</sup> Floor Chandni Chowk, New Delhi-110006.

.....Respondents

Ld. Counsel for the  
Respondents.

:**Shri Asheesh Agnihotri**,  
Central Govt. Standing Counsel

**ORDER**

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

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

*(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned rejection order dated 16.03.2006, 24.02.2006 after summoning the same because, the impugned order dated 24.02.2006 has not been served to the applicant in any manner till today & para 10 of the service book, passed by the opposite party No 2, 3 & 2 as contained in annexure No 1 & 2 to this original application.*

*(ii) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension for life to the applicant from 02.03.2005 to actual date of payment, @ 50% with rounding of, and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.*

*(iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.*

*(iv) That this Hon’ble Tribunal may be pleased to award the cost of this original application and allow the same.*

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 and 23 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 04.01.2018.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 09.09.1981 and was discharged from service with effect from 30.09.2005 under Army Rule 13 (3) III (i) in low medical category

S2H1A1P1E1 for the disability 'Moderate Depressive Episode (ICD-10, F-32.1)' after rendering more than 24 years of service. Release Medical Board (RMB) held before discharge on 07.05.2005 at Military Hospital, Meerut considered the disability @ 30% for five years neither attributable to nor aggravated by military service (NANA). His claim for grant of disability pension was rejected by the PCDA (P), Allahabad vide order dated 24.02.2006 and was conveyed to the applicant vide letter dated 16.03.2006. Thereafter, the applicant preferred his first appeal dated 11.11.2006 against rejection of the disability pension claim but it has not been decided till date. Feeling aggrieved, the applicant has filed this Original Application.

4. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was examined by the Enrolment Medical Board and was found medically and physically fit for a service in the Indian Army and there is no note, whatsoever, in his service documents that he was suffering from any disease at the time of entry in service. Ld. Counsel for the applicant further submitted that the applicant was first detected to be suffering from 'Moderate Depressive Episode (ICD-10, F-32.1)' w.e.f. 20.04.2003 after completion of approx twenty two years of service. The Ld. Counsel further submitted that since his disability

'Moderate Depressive Episode (ICD-10, F-32.1)' has taken place while on military duty, it should have been either attributable to or aggravated by military service and the applicant should be granted disability pension.

5. Per contra, Ld. Counsel for the respondents has submitted that the RMB has assessed applicant's disability 'Moderate Depressive Episode (ICD-10, F-32.1)' @ 30% for five years as neither attributable to nor aggravated by military service (NANA) therefore he is not entitled to disability pension. The Ld. Counsel further submitted that his claim for disability pension has rightly been rejected in accordance with Para 173 of the Pension Regulations for the Army, 1961 (Part-I) which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. Relying upon Hon'ble Apex Court judgment in the case of **Secretary of Ministry of Defence & Others vs Late Sep Damodaran AV**, Ld. Counsel for the respondents submitted that the Medical Board is an expert body and its opinion is to be given due weight, value and credence. He further contended that in the case in hand since the Medical Board has considered the disability of the applicant as NANA, PCDA (P), Allahabad has rightly

rejected disability pension claim in respect of the applicant giving due weightage, value and credence to the opinion of the Medical Board who has physically examined the applicant. He pleaded for the O.A. to be dismissed.

6. Heard Shri VK Pandey, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents and perused the records. We have also perused the RMB proceedings.

7. The only question which need to be answered is as follows:-

Whether the disability of the applicant is attributable to or aggravated by military service?

8. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers, to sum up the legal position emerging from the same in the following words:-

*"29.1. Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

29.2. *A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

29.3. *The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

29.4. *If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

29.5. *If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

29.6. *If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

9. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing a cryptic sentence that the disability of the applicant is 'not connected with service' without giving any meaningful reason. Moreover, in RMB Proceedings on page 3 Para 1 against the question "**Did the disability exist before entering service?**" – "**No**" has been answered. Further, since the applicant was enrolled in the Army on 09.09.1981 and the disability was first time detected on 20.04.2003 i.e. after approx twenty two years of military service, therefore, we are of the considered

opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service.

10. In the instant case, there is no dispute that the applicant's disability has been assessed as 30% for five years. Thus in view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled to 30% disability pension for five years. We are also of the opinion that the applicant is entitled to the benefit of rounding off of disability element in view of Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar & ors***, Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014). However, due to law of limitations the applicant will not be entitled to any arrears of disability element beyond three years of filing of this O.A. Hence, in totality, the applicant will not be entitled to any arrears of disability element for the period in question i.e. until five years after discharge.

11. Thus in the result, the Original Application succeeds and is **Partly allowed**. The impugned order dated 24.02.2006 is set aside. The disability of the applicant i.e. 'Moderate Depressive Episode (ICD 10, F 32.01) @ 30% is

to be considered as aggravated by military service for five years w.e.f. his date of discharge i.e. 01.10.2005. However, due to law of limitations, he shall not be entitled to any arrears of disability element. The respondents are directed to hold Re-survey Medical Board (RSMB) of the applicant within 04 months of this order. His further entitlement to disability element will be subject to the outcome of the RSMB.

No order as to costs.

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

Dated: April, 2019  
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**(Justice S.V.S. Rathore)**  
**Member (J)**