

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

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

**ORIGINAL APPLICATION NO.175 OF 2018**

**Wednesday, this the 03<sup>rd</sup> day of April, 2019**

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

IC-42627F Col Satyendra Singh (Retd),  
S/o Sobaran Singh, R/o 141 Jalvayu Vihar, Phase-2,  
Mansarovar Yojana, Kanpur Road, Ashiyana,  
LDA Colony, Lucknow 226012.

.....Applicant

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

Versus

1. Union of India through the Secretary,  
Ministry of Defence (Army), DHQ PO- New Delhi-11.
2. Chief of Army Staff, Army Headquarters,  
Sena Bhawan, New Delhi.
3. Commanding Officer, 16 Corps Arty, Brigade, C/o 56 APO.
4. Principal Controller of Defence Accounts,  
Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the : **Dr S.N.Pandey,**  
Respondents **Ld. Counsel for the Respondents.**

**ORDER**

**Delivered by Hon'ble Mr. Justice SVS Rathore, (Member-J.)**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. The applicant has made the following prayers:

*“(a) Issue/pass an order or direction of appropriate nature to quash the decision taken by the First and Second Appeal of the applicant rejecting the disability pension claim and grant disability pension with effect from 01.01.2014.*

*(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears alongwith interest accrued to the applicant due to revision of his pension and continued to pay regular pension to the applicant in the revised rate.*

*(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

*(d) Allow this application with costs.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was commissioned in the Indian Army on 15<sup>th</sup> December 1984 in medically fit condition and was superannuated on 31.12.2013 after completion of more than 29 years of service. At the time of retirement, the applicant was brought before a duly constituted RMB on 18<sup>th</sup> August 2013. As per RMB proceedings dated 18<sup>th</sup> August 2013, the disability DM Type (ICD-E-14) @20% for life, DYSLIPIDEMIA 1-5% for life and SIMPLE OBESITY 1-5% for life were assessed as NANA. Accordingly, the claim of disability pension has been rejected by competent authority. The First Appeal and Second Appeal of the applicant have also been rejected in July 2015 and July 2017, respectively.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and asserted that having served for more than 29 years, he was found to be suffering from (i) DM Type (ICD-E-14), (ii) DYSLIPIDEMIA and (iii) SIMPLE OBESITY.

4. He asserted that the applicant has picked up these disabilities due to stress and strain of Army service. Ld. Counsel for the applicant further submitted that prevailing service conditions in the military units are very demanding and put similar stress as that of a field posting. Relying upon the Hon'ble Apex Court judgment in the case of *Dharamvir Singh vs Union of India & Ors*, reported in (2013) 7 SCC 316, Ld. Counsel for the applicant vehemently argued that the disability of the applicant is principally due to stress and strain of military service as the disability was suffered by the applicant at the fag end of his service and should be considered as aggravated by military service.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension. He further stressed that in the instant case onset of disability was in a peace station and there is no close time association with stress/strain of service as associated with Field/High Altitude/Counter Insurgency Operations. Therefore, disability of the applicant has been conceded as NANA by the RMB. He stated that the applicant is not eligible for disability pension and pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection orders of disability pension claim and first and appeals. The question before us is simple and straight i.e.-is the disability suffered by the applicant attributable to or aggravated by military service?

7. 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 & Ors* reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions 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 invalided 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)."*

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to first disability of applicant i.e. **DM Type (ICD-E-14)** only by endorsing a cryptic sentence i.e. "originated in peace area hence NANA". We feel that such a discrimination between the stress of a peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is well known that Military formations all over the World undertake intense training at peace location and such Military activities have their own stress and strain of Military service.

9. In view of the above, we are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of the law settled by the Apex Court in the case of *Dharamvir Singh vs Union of India & Ors* (supra) and the disability of the applicant **DM Type (ICD-E-14)** should be considered as aggravated by military service. We, however, agree with the RMB on the finding of NANA for the other two disabilities of the applicant.

10. In view of the above, we are of the view that the applicant is entitled to 20% disability for life which shall stand rounded off to 50% for life in terms of law settled by the Hon'ble Apex Court in *Union of India vs Ram Avtar & Ors*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

11. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be entitled to disability element @ 20% for life to be rounded off to 50% for Life three years prior to filing of this O.A. Date of filing this O.A. is 13.03.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

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

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

Dated: April, 2019  
PKG