

**Reserved**  
**Court No. 1**

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

**ORIGINAL APPLICATION NO. 223 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 167034-Z CH Elar Rajeev Kumar Mishra (Retired), S/o Shri (Late) Babu Ram Mishra, R/o Mohalla- Gokul Nagar, PO – Gandhi Ashram, Near ARTO Office, Barabanki – 225001 (UP).

....Applicant

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

Versus

1. The Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Naval Staff, New Delhi-110106.
3. IHQ MoD (Navy), PDPA New Delhi – 110001.
4. OIC, Naval Pension Office, C/o INS Tanaji, Sion Trombay Road, Mankhurd, Mumbai – 400088.
5. PCDA (P) (Navy), Draupadighat, Allahabad (UP)- 211014.

.....Respondents

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

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

*“ (A) To quash or set aside the respondents letters dated 09.10.2017, 25.07.2016 & 28.02.2015 (Annexure A-1(i), A1 (ii) & A1 (iii) respectively of OA).*

*(B) To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.02.2015 (Date of discharge: 31.01.2015) with all consequential benefits including rounding off benefit from 30% to 50% in terms of Govt of India letter dated 31 Jan 2001 and Judgment passed by Hon’ble Apex Court in case of Ram Avtar Vs Uol & Others.*

*(C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

*(D) Allow this OA with heavy cost.”*

2. The undisputed factual matrix on record is that the applicant joined the Navy on 07.01.1987 and was discharged from service on 31.01.2015. He was placed in low medical category S3A2(P) for disability “CORONARY ARTERY DISEASE” prior to his release from service on 31.01.2015. His disability was assessed by Release Medical Board (RMB)

@ 30% for life and opined as neither attributable to nor aggravated by Military Service (NANA). His claim for grant of disability pension was accordingly rejected by respondents vide letter dated 28.02.2015. The applicant preferred First Appeal and Second Appeal against the rejection of disability pension claim which were also rejected vide order dated 25.07.2016 and 09.10.2017 respectively. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension by means of present O.A.

3. Learned counsel for the applicant pleaded that since the applicant was enrolled in a medically fit condition and was discharged in low medical category and there is no note in the service documents that he was suffering from any disease at the time of entry into service, his disability should be considered as attributable to and aggravated by Military Service and the applicant should be granted disability pension.

4. **Per Contra**, learned counsel for the respondents submitted that the Medical Board considered the disability of the applicant @ 30% for life but found it neither attributable to nor aggravated by Military Service. Paragraph 101 of The Navy (Pension) Regulations 1964, clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by

Military Service and percentage of disablement is assessed as 20% or above. Hence his claim for grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The proposition of law with regard to attributability has already been settled by the Hon'ble Supreme Court and is no more a *res integra*. On careful perusal of RMB, we find that the only reason for declaring the disability of the applicant as NANA was that it originated in a peace area and not in a field area. We do not find this cryptic explanation to be satisfactory. Military personnel in peace station also have their own pressures of intense training and other military duty related stress and strains. Hence we would like to give benefit of doubt to the applicant in terms of the law settled by Hon'ble Supreme Court in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316. Thus considering all issues we are of the opinion that the disability of the applicant i.e. "CORONARY ARTERY DISEASE" should be considered as aggravated by Military Service.

7. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in

(2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar, Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

8. Now, we come to the claim of applicant for arrears of disability pension. On the point of arrears, we would like to refer to the pronouncements of Hon'ble Supreme Court in the cases of **Shiv Dass versus Union of India** reported in *2007 (3) SLR 445 and Union of India versus Tarsem Singh, Civil Appeal No. 5151-5152 of 2008*, decided on 13<sup>th</sup> August, 2008. In both the cases, the Hon'ble Apex Court has observed that in such cases, the arrears should be restricted only to three years before the date of filing of the petition.

9. In view of the discussion held above, this OA deserves to be allowed and is hereby **allowed**. The impugned orders passed by the respondents are hereby set aside. The disability of the applicant i.e. "CORONARY ARTERY DISEASE" is to be considered as aggravated by Military Service. The respondents are directed to grant disability element to the applicant at the rate of 30% for life which shall be rounded off to 50% for life from a date three years prior to the date of filing of this O.A. i.e.

20.12.2018. This exercise shall be completed within a period of four months from today, failing which the respondents shall have to pay interest at the rate of 9% per annum on the total amount, from the date it becomes due till the date of actual payment.

No order as to costs.

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

Date: April 2019

Ukt/-

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