RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)

ORIGINAL APPLICATION No. 454 of 2018

Friday, this the 16th day of August, 2019

"Hon'ble Mr. Justice Virender Singh, Chairperson
Hon'ble Air Marshal B.B.P. Sinha, Member (A)"

JC – 579231 Ex. Sub. Nar Singh S/o Shri Bhim singh R/o Village Aam Bagh, Near Junior High School, P.O. – Tanakpur, Tehsil – Shree Purnagiri Tanakpur, District Champawat, Uttarakhand-262309.

….. Applicant

Ld. Counsel for the Applicant : **Shri Kishore Rai,** Advocate.

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110001.

2. P.C.D.A. (P), Allahabad, Uttar Pradesh.

3. Addl. Dte. Gen. Personnel Services, Adjutant General's Branch IHQ of MoD (Army), Room No. 11, Plot No. 108 (West) Brassey Avenue Church Road, New Delhi-110001.

4. Senior Record Officer, Records JAK RIF Office, PIN 908774 C/O 56 APO.

........Respondents

Ld. Counsel for the Respondents. : **Ms. Pushpa Bhatt,** Central Govt. Counsel

ORDER

"**Per Hon'ble Air Marshal B.B.P. Sinha, Member (A)**"

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

   i. *A direction to quash the order dated 21.05.2009 passed by respondent no. 1 (contained as Annexure No.5 to this original application) or to*
   ii. *A direction to grant the disability pension to the applicant from the date of his retirement i.e. 01.10.2007 along with rounding off to the tune of 50%.*
   iii. *To summon the entire records of the applicant pertaining to computation of his disability pension.*
   iv. *Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 15.09.1979 and was discharged on 01.10.2007 in the rank of Subedar in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at 175 Military Hospital on 08.07.2007 assessed his disability '**PRIMARY HYPERTENSION IP'** @30% for life and **'DISLIPIMEDIA E78**' @Nil% for life. Composite disability was assessed as @30% for life. The RMB opined that both the disabilities are neither attributable to nor aggravated by military service (NANA). Hence, the claim of disability pension preferred by the applicant was

rejected by respondents. The First Appeal of applicant was rejected. Thereafter, the applicant had filed a Second Appeal before the respondents which was also rejected vide order dated 21.05.2009. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records. The

questions which needs to be answered is simple and straight i.e. whether the disabilities of the applicant are attributable to or aggravated by Military Service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus 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 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).*
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> *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)].*
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> *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).*
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> *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]*
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> *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)].*
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> *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)."*

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disabilities '**PRIMARY HYPERTENSION IP and DISLIPIMEDIA E78**' are neither attributable to nor aggravated (NANA) only on the ground that the onset of both the disabilities are in peace area and that there is no close association with stress and strain of field/CIOPS posting. We are of the opinion that this reasoning of RMB is not convincing and doesn't reflect the complete truth on this matter. Peace Stations have their own pressures of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 15.09.1979 and the disabilities have started after more than 25 years of Army service i.e. in January 2006. We are

therefore 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 disabilities of the applicant should be considered as aggravated by military service. In this context Para 24 of the relevant portion of the ***Dharamvir Singh Vs. Union of India & Ors*** (supra) Judgment is as follows :-

> *"24. The Rules to be followed by Medical Board in disposal of special cases have been shown under Chapter VIII of the "General Rules of Guide to Medical Officers (Military Pensions) 2002. Rule 423 deals with "Attributability to service" relevant of which reads as follows:*
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> > *"423(a) For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas."*

8. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). Thus in light of this Judgment the disability element of the applicant @30% for life shall stand rounded off to 50% for life.

9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

> *"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."*

10. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered view that benefit of rounding off of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

11. In light of above, the **Original Application No. 454 of 2018** deserves to be partly allowed, hence **partly allowed**. The impugned order dated 21.05.2009, enclosed at Annexure No. 5 of the Original Application, is set aside. The disabilities '**PRIMARY HYPERTENSION IP'** and **'DISLIPIMEDIA E78**' are to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 19.09.2018. 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 till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: 16 August, 2019
AKD/-