

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 252 of 2019**Wednesday, this the 11<sup>th</sup> day of August, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Smt. Ashia Begum  
W/o Late JC-94566K Ex Ris Hidayat Ullah  
S/o Shri Amanat Ullah  
R/o Vill & PO – Tala, Tehsil – Patti,  
District – Pratapgarh (UP) – 230403.**.... Applicant**Ld. Counsel for the Applicant: **Shri Girish Tiwari &**  
**Shri Vijay Kumar Pandey, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. Addl. Dte Gen, Pers Services, Adj. Gen. Branch, IHQ of MoD (Army), DHQ PO, New Delhi-110011.
3. OIC Records, Armoured Core (Kavachit Corps Abhilekh) – 900476, C/o 56 APO.
4. PCDA (P), Draupadighat, Allahabad (UP).

**... Respondents**Ld. Counsel for the Respondents : **Shri Kaushik Chatterjee,**  
Central Govt Counsel.**ORDER**

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 following reliefs:-

- “(i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned rejection order dated 17.08.2018, passed

by the opposite party no.3, as contained in annexure no. 1 to this original application.

- (ii) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to grant the disability pension to the applicant from the date of discharge i.e. 03.07.1988 to actual date of payment 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 kindly be pleased to award the cost Rs. 20,00,000/- (Rs. Twenty lac) in the favour of applicant for mental and physical harassment and agony with the interest @ 18% p.a. in the interest of justice.
- (iv) 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."

2. The present O.A. was filed by Ex Ris Hidayat Ullah who died during pendency of Original Application and, after his death, his wife Smt. Ashia Begum has been substituted in his place by Tribunal's order dated 12.01.2021.

3. Brief facts of the case giving rise to this application are that the deceased soldier was enrolled in the Indian Army on 26.10.1965 and was discharged from service on 03.07.1988 under the provisions of Rule 13 (3) I (iii) (b) of Army Rules, 1954 after having rendered more than 22 ½ years service in low medical category 'BEE' (Permanent) due to disability "**SEPTIC THROMBO EMBOLISM (RT) EYE**". Prior to discharge from service husband of the applicant was brought before Release Medical Board (RMB) on 22.03.1988 which assessed his

disability @ 20% for two years, neither attributable to nor aggravated by military service. The deceased soldier was in receipt of service pension. Disability pension claim was rejected vide order dated 26.08.1988. Against rejection of disability claim the deceased soldier had preferred an appeal dated 06.08.2018 to the respondents which was suitably replied by Armoured Corps Records vide their letter dated 17.08.2018. It is in this perspective that applicant has filed this O.A.

4. Learned counsel for the applicant submitted that the deceased soldier was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Learned counsel for the applicant placed reliance on judgments of the Hon'ble Apex Court in the case of ***Dharambir Singh vs. Union of India & Ors***, reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs. Union of India & Ors***, reported in 2014 STPL (WEB) 468 SCC, ***Union of India vs. Rajbir Singh*** (2009) 9 SCC 140, ***Veer Pal Singh vs. Ministry of Defence*** (2013) 8 SCC 83, ***Union of India vs. Ram Avtar***, Civil appeal No. 418 of 2012, decided on 10.12.2014 and pleaded for the grant of disability pension to applicant.

5. On the other hand, learned counsel for the respondents argued that the RMB has declared the disability as NANA, therefore, the

competent authority has rejected the claim of disability pension under the provisions of Rule 173 of Pension regulations for the Army, 1961 (Part-1). The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

6. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB proceedings and the rejection order of the disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

7. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. 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/aggravation, we find that the RMB has denied attributability/aggravation of disability to deceased soldier only by endorsing a cryptic sentence in the proceedings i.e. 'disease is not related to service'. We do not find this cryptic remark adequate to deny attributability/aggravation of disability to a soldier who was fully fit since his enrolment and the disease in question had first started in the year 1986 after completion of 20 years of service, therefore, we are of the considered opinion that in the circumstances the benefit of doubt should be given to the deceased soldier as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and his disability should be considered as aggravated by military service.

9. In view of the above, husband of the applicant is held entitled to 20% disability element for two years from his date of discharge from service. Since the husband of the applicant died on 23.07.2019,

