

**Court No. 1**

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

**Original Application No. 26 of 2020**

Wednesday, this the 09<sup>th</sup> day of December, 2020

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

IC-33475K Colonel Sharad Seth (Retd) son of Late Shri Harish Chand Seth, resident of 309, Dream Villa, Eldeco Greens, Gomtinagar, Lucknow, Pin-226010.

**.... Applicant**

Ld. Counsel for the: **Col YR Sharma (Retd)** , Advocate.  
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), South Block, DHQ, PO, New Delhi-110011.
3. Additional Directorate General Personnel Services, Adjutant General's Branch, Integrated Headquarters of MoD (Army), DHQ PO, New Delhi-110011.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad-221014.

**... Respondents**

Ld. Counsel for the: **Mrs Anju Singh**, Advocate  
Respondents. Central Govt Counsel.

**ORDER (Oral)**

**M.A. No. 416 of 2019**

1. This is an application for condonation of delay.
2. There is delay of 06 years, 03 months and 24 days in filing Original Application.
3. Considering that in pensionary matters bar of limitation is not applicable, as cause of action in such matters does not accrue on a specific date, but it runs from month to month, and grounds stated in affidavit filed in support of delay condonation application being genuine and sufficient, delay in filing application is condoned. Delay condonation application stands decided accordingly.
4. Aggrieved by the impugned order dated 29.06.2012, denying him disability element of pension, the applicant has filed the instant O.A. seeking the following reliefs:
  - (I) *Set aside/quash the RMB proceedings to the extent where in disability of primary hypothyroidism as been held as NANA being Idiopathic, Filed as Annexure A-1.*
  - (II) *Set aside/quash the Army Headquarters letter No 1303/IC-33475K/Arty/A-13/MP 6B dated 29.06.2012 rejecting the initial claim of grant of disability pension filed as Annexure A-4.*
  - (III) *Issue orders/direction in appropriate nature to treat the disease of primary Hypothyroidism as aggravated and attributable to service and accordingly grant disability pension.*
  - (IV) *Broad Band the existing disability of 20% to 50% from the date of retirement.*
  - (V) *Issue/pass an order or direction as the Honourable Tribunal may deem fit and proper in the circumstances of the case.*

(VI) *Allow this Original Application with costs.*

5. The facts of the case, in brief, are that the applicant was commissioned in the Indian Army on 29.04.1973 and superannuated on 31.10.2005, in low medical category S1H1A1P2(P)A1, after having served for more than 32 years. The Release Medical Board (RMB) had assessed his disability 'Primary Hypothyroidism' @ 20% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 28.05.2012. Thereafter appeal seems to have not been preferred in time but protracted correspondence has been made but without response. Hence the instant O.A.

6. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in service and any disability not recorded at the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India & Others*** (2013) 7 SCC 316, and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial enrolment medical board and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 20% for life and the same is to be broad banded to 50% for life.

7. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disability of the applicant @ 20% for life, it opined that the disability is neither attributable to nor aggravated by military service (NANA). As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant O.A. does not have any merit and the same is to be dismissed.

8. Having heard the learned counsel for both the parties and perusal of the records, the only question that needs to be answered is, whether the disability of applicant is attributable to or aggravated by military service?

9. We have noted that the only reason for which the disability 'Primary Hypothyroidism' has been opined as NANA by the RMB and rejection order dated 28.05.2012 is that the disease being 'Idiopathic Disorder' is not related to military service and also it being originated in peace area. We have also noted that applicant has served at various difficult Field/High Altitude Areas prior to detection of aforesaid disease. However, on further scrutiny, we have observed that the applicant's disability was first detected on 18.08.1995 i.e. after completion of 22 years of service. Additionally, we do not agree with the view that military stations in peace area do not have any stress and strain of military service. Hence we are inclined to give benefit of doubt in favour of the applicant. Thus, we are of the considered opinion that 'Primary Hypothyroidism' of applicant is to be considered as aggravated by military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of **Dharamvir Singh** (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%, in terms of the decision of Hon'ble Supreme

Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

10. Resultantly, the O.A is **allowed**. The impugned orders are set aside. The applicant's disability 'Primary Hypothyroidism' is to be considered as aggravated by military service. The applicant is entitled to disability element @ 20% for life, which shall be broad banded to 50% for life from the date of his discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and Ors***, (2007 ) 3 SLR 445), the arrears of disability pension will be restricted to three years before the date of filing of the instant O.A. The date of filing of this O.A is 25.04.2019. This order is to be implemented by the respondents within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 09<sup>th</sup> December, 2020

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