

RESERVED
COURT NO 1

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

ORIGINAL APPLICATION No. 158 OF 2018

Thursday, this the 14th day of February 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Lt Gen (Dr.) N.B. Singh, Member (A)”

JC 530737M Ex Sub Santosh Kumar Singh S/O Sheomole Singh resident of Vill-Chandra, PO-Bannamau, Tehsil-Lalganj, District-Raebareilly, Uttar Pradesh-229206.

.....Applicant

Ld. Counsel for: **Shri Virat Anand Singh**, Advocate
the Petitioner

Versus

1. Union of India and others through The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ, PO, New Delhi-110011.
3. CRO, Records Garhwal Rifles, Lansdowne, Pin-900400.

.....Respondents

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

ORDER**“Per Hon’ble Lt Gen (Dr.) N.B. Singh, Member (A)”**

1. This is an O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007 praying for grant of disability pension (DP) @ 40% from the date of discharge i.e. 31.05.2016, along with rounding off benefits.

2. The applicant was enrolled in the Army on 26.07.1986 and was discharged on 31.05.2016 after serving for 29 years and 10 months. The Release Medical Board (RMB) held on 04.03.2016, assessed the disability of Coronary Artery Disease (CAD) at 40%, and considered it as being neither attributable to nor aggravated by military service (NANA). Vide letter dated 14.04.2016, the OIC Records had intimated to the applicant, that his case for DP had been rejected by the Competent Authority (CA), his first appeal dated 01.06.2016, has not yet been decided by the CA.

3. In the reply statement, the respondents have reiterated the basic facts of the case. They have submitted that the first appeal of the applicant has been rejected by the CA on 25.07.2017 on the grounds that onset was in peace area and the disability was conceded as being NANA as the 14 days charter of duties preceding onset of ID did not bring out any exceptional stress and

strain due to service. They have clarified that the applicant was discharged from service on medical grounds under Rule 13 (3) I (ii) (a) (i), as no sheltered appointment was available and have concluded by praying for dismissal of the O.A., being devoid of merit.

4. In the rejoinder affidavit, the applicant has brought out that the disability occurred during his active service and placed reliance on the Hon'ble Apex Court's judgment in ***Veerpal Singh vs Secretary, MoD***, (2013) 8 SCC 83, ***Dharamvir Singh vs UOI & Others***, (2013) 7 SCC 316 and that the applicant's case was squarely covered under the rules, as no note of any disability was made at the time of his joining service.

5. We have perused the pleadings of both sides and examined the RMB proceedings. Further, in response to questions 2 and 3 page 3 of the RMB, the following answers have been given:-

"2. Did the disability exist before entering service? -No.

3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the entry?

-NA."

6. We find that the disability of the applicant is adequately covered by the law laid down by the Hon'ble Apex Court in the case of ***Dharamvir Singh vs UOI & Others***, (2013) 7 SCC 316. It is noticed vide Entitlement

Rules for casualty Pensionary Awards to Armed Forces Personnel, 2008, it has been clarified in para 10 (b) (i) (a&b) that :-

"(b) Disease:-

(i) For acceptance of disease as attributable to military services, the following two conditions must be satisfied simultaneously:-

(a) that the disease has arisen during the period of military service; and

(b) that the disease has been caused by the conditions of employment in military service."

7. It is seen that the Medical Board has given the following opinion in RMB proceedings:-

1. Causal relationship of the Disability with service condition or otherwise:				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reason/cause/specific condition and period in service
CORONARY ARTERY DISEASE I-24.9	'N'	'N'	'Y'	As per GTMO-2008, PARA-47(b) Page 31 and 32 DISABILITY OCCURS/ONSET IN PEACE STATION.

8. In the decision of ***Dharamvir Singh vs UOI & Others***, (2013) 7 SCC 316, it has specifically been mentioned in para 34 that the so-called distinction that the disability can be conceded only when a person has been serving in field service/active service areas and not under normal peace conditions is not very tenable and it has been held in para 34 as follows:-

"Para 34. *As per Rule 423 (a) of General Rules for the purpose of determining a question 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. 'Classification of diseases' have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the applicant bore a causal connection with the service conditions."*

9. Learned Counsel for the applicant has brought out that the applicant was fit in all respects and free from any disease at the time of entry into service and that the RMB has specifically observed that the disease had originated during service (peace station), and under circumstances over which the applicant had no control, and that the work of the applicant was extremely stressful. The Hon'ble Apex Court cases including ***Dharamvir Singh vs UOI & Others***, (2013) 7 SCC 316, ***Veerpal Singh vs. Secretary Ministry of Defence & Others***, (2013) 8 SCC 83, have been relied on in para 03 of the rejoinder affidavit, for emphasizing that in the instant case the conditions of service were responsible for the onset of the disease and that nowhere in the medical documents of the applicant is it recorded that the disease existed prior to the applicant joining in service, and for reasons stated it could not have been detected at the time of entry into service. In the absence of any such record it should be

accepted that the disease was attributable to and aggravated by the service.

10. To the specific points raised in para 04 of the rejoinder affidavit of non-recording of the fact regarding the possibility of the pre-existence of the disease prior to the applicant joining service and the reasons for not noticing the disease there was no denial. Nor were the cases of ***Dharamvir Singh etc*** cited by the applicant sought to be distinguished or countered by the respondents, for the proposition that in such circumstances, where the applicant was fit at the time of entry into service and there was no contemporaneous record with reasons as to why the disease may have pre-existed but it was not noticed at the time of entry, the disease would be deemed or presumed to have been either caused by service in the Armed Forces or to have at least been aggravated by it, and that the benefit of any such reasonable doubt should be given to the claimant in such circumstances, and the onus lies on the respondents (and not on the applicant) to establish that the disability was not due to his service conditions.

11. With reference to the disability of CAD, it is noted that the common cause of this disease is vascular injury with cholesterol plaque built up in the arteries and the risk

increases with age. In this view of the matter, we are of the view that the applicant has made out a case for interference and the disability has to be held to be either attributable to or aggravated by military service. So far as the prayer of the applicant for rounding off of the disability pension, we are of the opinion that the disability element has to be rounded off in view of the decision of the Hon'ble Apex Court judgment in Civil Appeal No 418/2012, ***Union of India & Others vs. Ram Avtar***, decided on 10.12.2014 and the GoI, MoD letter dated 31.01.2001 and the rounding off of the disability from 40% to 50% is admissible in the present case.

12. We are further of the opinion that in the present case where the applicant after his retirement from service on 31.05.2016 wherein his tenure of service was cut short and the denial of disability pension by the RMB on 04.03.2016 by holding the ID to be NANA, has been consistently and promptly challenging the orders and agitating for grant of disability pension by filing representation followed by first appeal on 01.06.2016 which was dismissed on 25.07.2017. Thereafter he has preferred the present O.A. on 29.08.2017, wherein we have held that for the reasons stated above the applicant is entitled for disability pension. In such circumstances, it is in the interest of justice that the applicant be awarded

disability element of 40% for life from the date of his retirement, i.e. from 01.06.2016 along with broad banding to 50%. In case the arrears are not paid within a period of four months, the applicant will be entitled to interest @ 8% p.a. on the arrears till the date of payment.

13. The O.A. is **allowed** as above.

No order as to costs.

(Lt Gen (Dr.) N.B. Singh)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: February, 2019
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