

RESERVED
Court No.1

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

Original Application No 388 of 2018

Monday, this the 18th day of February 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. JC-642339-M Ex-Sub Ram Ujagir, Son of Late Ramadharey, Resident of Plot No-19, Swaroop Park, Sahibabad, Ghaziabad, U.P.-201005, India.

..... Applicant

Ld. Counsel for : **Shri Pankaj Kumar Shukla**, Advocate
the applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, South Block, New Delhi-110011.
3. The Officer-In-Charge, ASC Records (South), Bangalore-560007.
4. The PCDA (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**
Respondents Central Govt Counsel.

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby she has sought following reliefs:-

- (a) *To issue/pass an order to set-aside/quash the order dated 25.10.2017 rejection of disability pension and rejection of First Appeal vide letter dated 13.06.2018.*
- (b) *To issue/pass an order or directions to the respondents for grant of disability element of disability pension from date of discharge i.e. 30.11.2017.*
- (c) *To issue/pass an order or directions to rounding off the disability pension of the applicant @ 40% to 50% alongwith 12% interest of the arrear from the date of discharge i.e. 30.11.2017.*
- (d) *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (e) *To allow this original application with costs.*

2. The brief facts of the case giving rise to the instant original applicant are that the applicant was enrolled in the Indian Army on 03.11.1987 and superannuated on 30.11.2017 on completion of tenure of engagement. The Release Medical Board (RMB) held on 08.07.2017 at Command Hospital, Lucknow assessed his disabilities ‘(i) Diabetes Mellitus Type-2 (ii) Primary Hypertension’ @ 40% composite for life but opined the disabilities to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 25.10.2017.

Thereafter First Appeal against rejection of disability pension claim was rejected by the competent authority vide order dated 13.06.2018. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and asserted that having served for more than 28 years, he was found to be suffering from (i) Diabetes Mellitus Type-2 and (ii) Primary Hypertension. The applicant's medical category was downgraded to P2 (permt) and till retirement he served in low medical category. The Ld. Counsel for the applicant asserted that the applicant has picked up this disability due to stress and strain of Army service. Ld. Counsel for the applicant further submitted that prevailing service conditions in the military units are very demanding and put similar stress as that of field posting. Relying upon the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316, Ld. Counsel for the applicant vehemently argued that the disability of the applicant is principally due to stress and strain of military service as the disability was suffered by the applicant at the fag end of his service and should be considered as aggravated by military service.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension. He further stressed that in the instant case onset of disability was in a peace station and there is no close time association with stress/strain of service as associated with Field/High Altitude/Counter Insurgency Operations. Therefore, disability of the applicant has been conceded as NANA by the RMB. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection orders of disability pension claim and first appeal. The question before us is simple and straight i.e.-is the disability suffered by the applicant 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 vs. Union of India & Ors*** 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).

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)."

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 (i) Diabetes Mellitus Type-2 and (ii) Primary Hypertension are general in nature and the onset of disabilities is in peace area with no close time association with stress/strain of service in Fd/HAA/CI Ops. We feel that such a discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequences of military service. The benefit of doubt therefore shall be rightly extended in favour of the applicant. In the instant case since the applicant was found to be suffering from disability when he had put in more than 28 years of service, it should be deemed to be aggravated by military service.

8. 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 disability of the applicant should be considered as aggravated by military service.

9. In view of the above, we are of the view that the applicant is entitled to 40% disability for life which shall

stand rounded off to 50% disability for life in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be entitled to disability element @ 40% for life to be rounded off to 50% for life w.e.f. 01.12.2017 i.e. date of discharge of the applicant. 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.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : February, 2019

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