

RESERVED
Court No.1

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

Original Application No 84 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. 14462064-X Ex Hav Mohan Singh, son of Late Fauran Singh, R/O 208A, Anandvan, Phase-II Navada, Mathura, Post-Adooki, Distt-Mathura-281006 (UP).

..... Applicant

Ld. Counsel for : **Shri R. Chandra**, Advocate
the applicant

Versus

1. Union of India, through, The Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office-New Delhi-11.
3. The Officer-in-Charge, Defence Security Corps Records, PIN-901277, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain 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) *Hon’ble Tribunal may be pleased to set aside the Order dated 12.01.2017 (Annexure No A-1).*
- (b) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.02.2017 for life along with the interest at the rate of 24% per annum.*
- (c) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar’s case.*
- (d) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. The brief facts of the case giving rise to the instant original applicant are that the applicant was enrolled in the Defence Security Corps on 01.07.2000 and superannuated on 31.01.2017 on completion of tenure of engagement in terms of Army Rule 13 (3) III (i) of Army Rules, 1954. The Release Medical Board (RMB) on 02.05.2016 assessed his disabilities ‘Coronary Artery Disease (CAD) 1 25.4’ @ 30% for life but opined the disability to be neither attributable to nor aggravated by military service (NANA). On denial of disability pension first appeal was preferred by the applicant on 26.02.2017 which was rejected vide order dated 12.01.2017. 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 13 years, he was found to be suffering from 'Coronary Artery Disease'. 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 order of 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 disability of the applicant is not related to service as there

was no close association with service in Field Area vide para 47, Chapter VI of GMO-2008 (Mil Pens) i.e. the disability of the applicant has taken place while serving in peace area. 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 has to 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 13 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 30% 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 @ 30% for life to be rounded off to 50% for life w.e.f. 01.02.2017 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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