

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 480 of 2017**Monday, this the 1<sup>st</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Devender Kumar Singh  
 S/o Sri Yugal Kishore Singh  
 Ex. Sepoy Driver No. 6947102H  
 Unit – 16, FAD  
 R/o 145EE, B Block, Dayal Residency, Chinhat, Lucknow  
 ..... Applicant

Ld. Counsel for the Applicant: **Shri S.S. Rajawat**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110001.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. OIC, Records 16, FAD
4. Commanding Officer, 16, FAD, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Chet Narain Singh**,  
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 for the following reliefs:-

“(a) To direct the respondents for declaring the disability ‘Primary Hypertension’ of the applicant as attributable to or aggravated by military service and grant the disability element of disability pension from the date of his discharge i.e.

17.08.2016 from the service with rounding off facility to 50% with interest of 18% per annum with interest.

(b) To pass such other orders/direction as deemed fit as required in the facts and circumstances of the present case.”

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 29.07.2003 and was invalided out from service on 17.08.2016 in low medical category being medically unfit. The Invaliding Medical Board (IMB) assessed his disabilities (i) **“ALCOHOL DEPENDENCE SYNDROME”** @ 15-19% and (ii) **“PRIMARY HYPERTENSION”** @ 30%, composite @ 40% for life (Net assessment qualifying for disability pension – Nil% for life) and opined that disability of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant submitted representation dated 02.12.2016 to the Chief of the Army Staff which was disposed off vide order dated 28.12.2016. Thereafter, applicant filed O.A. No. 248 of 2017 alongwith M.A. No. 1145 of 2017 in this AFT to set aside the order of discharge and to direct the respondents to reinstate him in service. This Tribunal vide order dated 18.07.2017 disposed off M.A. No. 1145 of 2017 Inre O.A. No. 248 of 2017 directing the respondents to decide the statutory complaint dated 02.12.2016 within six months by a speaking order. Accordingly, statutory complaint of the applicant has been decided vide order dated 26.08.2017. Now the applicant has filed fresh O.A. No. 480 of 2017 to grant disability pension.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any

disability not recorded at the time of enrolment should be presumed to have been caused subsequently while in service. The action of the respondents in not granting disability pension to the applicant is illegal, therefore, the disability (Primary Hypertension) of the applicant is to be considered as aggravated by service and he is entitled to get disability pension duly rounded off to 50%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities of the applicant @ 40% composite, it opined that (i) disability is NANA due to prolong alcohol abuse not related to service condition and (ii) disability is NANA as onset of disease is in peace area. As such, his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records. The questions which needs to be answered is straight and simple i.e. Whether the disability of the applicant is attributable to or aggravated by Military Service?

6. After going through the opinion of the specialist medical officer, we have noted that the first disability i.e. 'Alcohol Dependence Syndrome' has been opined as NANA by the RMB in light of the fact that it is due to prolong alcohol abuse. Hence we are

agree with RMB opinion that the disease is NANA and also below 20%.

7. As far as second disability i.e. 'Primary Hypertension' is concerned, we have noticed that the only reason for declaring the disease as NANA is that it has originated in peace area and not connected to military service. However, on further scrutiny, we have observed that this disability was initially detected in the year 2013 after about 10 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant. Thus we are of the considered opinion that second disability i.e. **"Primary Hypertension" @ 30% for life** is to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316.***

8. The applicant will also be eligible for the benefit of rounding off of second disability from 30% to 50% for life 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).

9. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders are set aside. The applicant's disability **"Primary Hypertension" @ 30% for life**, is to be considered as

aggravated by military service and his disability pension is to be rounded off from 30% to 50% for life from the date of his invalidment from service i.e. 17.08.2016. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

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

Dated: February, 2021

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