

**Court No.3**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 291 of 2012**

Friday this the 04<sup>th</sup> day of December, 2015

**Hon'ble Mr. Justice D.P.Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex Havildar Chandra Shekhar Prasad Gupta  
(No 14558818Y) S/o Late Shri Gajadhar Prasad  
Gupta, aged about 49 years, Resident of House  
No.592/111, Bengali tola, (Near Khan Market)  
Kharika, Telibagh, Lucknow State Utter Pradesh

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, through the Secretary,  
Ministry of Defence, Government of India,  
New Delhi.
2. Chief of the Army Staff,  
Integrated Headquarters of Ministry of Defence  
(Army) DHQ, Post Office New Delhi.
3. The Officer-In-Charge, EME Records,  
Secunderabad PIN-900453 C/ 56 APO
4. The CDA (Pension)  
Draupadi Ghat, Allahabad (UP)

..... Respondents

By Legal Practitioner Shri D.K. Pandey, Learned Counsel for  
the Central Government assisted by Capt. Ridhishri Sharma,  
Departmental Representative

**ORDER (ORAL)**

1. Present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by the applicant being aggrieved by non-grant of disability pension by the respondents @ 30% for life. The disability is admitted.
2. We have heard Shri R. Chandra, learned counsel for the applicant, Shri D. K. Pandey, learned standing counsel for the respondents assisted by Capt. Ridhishri Sharma, Departmental Representative and perused the record.
3. The applicant was enrolled in the Indian Army in Army Ordnance Corps on 21.09.1983 in EME Corps as Vehicle Mechanic. While serving in Army, the applicant was promoted to the rank of Havildar. However, on 17.02.2009, he was found to be suffering from “Degenerative Aortic Valve Disease (OPTD)” and Aortic Valve Replacement was done in Army Hospital Delhi and on 01.05.2009, the applicant was placed in low medical category P-3 (T-24) with effect from 01.05.2009. Pursuant to said disease, the Release Medical Board held on 04.08.2009, which was approved on 17.08.2009 by HQMB Area Jabalpur (MP). The Release Medical Board had assessed the applicant’s disability at 30% for life, and the applicant was discharged from service on 30.09.2009 for the disability in pursuance of decision taken by the Release Medical Board.
4. Though, the applicant has been paid all post retiral dues, including regular pension, but his claim for disability pension has been rejected vide letter dated 06.01.2010 by respondent No.3, on the ground that the disability was neither attributable to nor aggravated by military service. The appeal was also rejected vide order dated 06.02.2012 by the Adjutant

General's Branch, Army Headquarters. Feeling aggrieved, present O.A. has been filed by the applicant.

5. The question of grant of disability pension is no *res integra*. The Hon'ble Supreme Court in the case of **Dharmvir Singh vs. Union of India & others**, reported in 2013 AIR SCW 4236, has held that in case at entry level, disability is not found in relation to any individual and later on during course of service, he suffers from any disease or disability, it shall amount to have occurred during the course of service on account of army service and it necessarily has to be treated as attributable to and aggravated by military service and the disability pension has to be granted to such an individual. Relevant portion of the judgment contained in Para 28 is reproduced as under:

*"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*

- (i) Disability pension to be granted to an individual who is invalidated 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 above, the question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*
- (ii) A member is to be presumed in sound physical and mental condition upon entering 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 r/w Rule 14(b)].*
- (iii) 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).*
- (iv) 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)].*

- (v) *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. [14(b)].*
- (vi) *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. [14(b)]; and*
- (vii) *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."*

6. Aforesaid proposition of law, as reproduced herein above, has again been followed by the Hon'ble Supreme Court in the case of **Sukhvinder Singh vs. Union of India and others**, reported in (2014) STPL (WEB) 468 SC.

7. In view of above, admittedly the applicant, who has suffered disability during the course of army service, his disability has to be treated as attributable to and aggravated by military service, and he is entitled for grant of disability pension and the O.A. deserves to be allowed.

8. Accordingly, the Original Application succeeds and is allowed. The impugned orders dated 06.01.2010 and 06.02.2012 are set aside with all consequential benefits. The respondents are directed to pay disability pension @ 30% for life, expeditiously, say within a period of four months from the date of receipt of a certified copy of this order.

9. No order as to costs.

(Air Marshal Anil Chopra)  
Member (A)

(Justice D.P. Singh)  
Member (J)

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Dated : 04<sup>th</sup> Dec. 2015