

Court No. 1

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

Original Application No. 395 of 2019

Thursday, this the 03rd day of December, 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

JC-669351-X Ex Subedar Rishi Keshan Verma, son of Late Sita Ram Verma, resident of village-Jarona, Post-Akhtayarpur, District-Sitapur, PIN-261121 (UP).

.... Applicant

Ld. Counsel for the: **Shri R Chandra** , Advocate.
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, ASC Records (South), Bangalore-560007.
4. The Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad-14 (UP).

... Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh**, Advocate
Respondents. Assisted by **Maj Sini Thomas**,
Departmental Representative

ORDER (Oral)

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

- (I) Hon'ble Tribunal may be pleased to set aside the impugned order dated 18.04.2019 (Annexure No A-1).*
- (II) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.11.2018 with the interest at the rate of 18% per annum.*
- (III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar's case.*
- (IV) 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. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 17.10.1988 and after having completed more than 30 years of service he was discharged from service in low medical category P2 (permt) on 31.10.2018. Prior to discharge from service applicant was brought before Release Medical Board (RMB) held on 06.07.2018 which assessed applicant's disability @ 40% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 29.08.2018. First Appeal dated 10.12.2018 against rejection of disability pension claim

has been rejected vide order dated 18.04.2019 on the ground that disability has occurred in peace station. Hence this O.A.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Air Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that applicant, on 30.07.2015 while posted at Bhopal, was diagnosed to be suffering from 'CAD-STEAWMI MILD LV DYSFUNCTION SVD-PCI-LAD (DES)'. This disease he feels is due to stress and strain related to rigors of military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disability as NANA, therefore, the competent authority

has rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors,*** (2013) 7 SCC 213. 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/aggravation, we find that the RMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. *'The disease is not associated with hypertension, DM, Vasculities and occurred during peace tenure where that is no exceptions stress and strain of service so the disease may be result of biological factors hereditary and way of life style hence attributability and aggravation is not conceded as per para 4.7 of GMO 2008.'* We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in July 2015 i.e. after completion of about 27 years of his

service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above applicant is held entitled to 40% disability element for life from the date of his discharge.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders dated 29.08.2018 and 18.04.2019 are set aside. The disability of the applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is extended in terms of ***Union of India and Ors vs. Ram Avtar & Ors, Civil Appeal No 418 of 2012 dated 10th December 2014***). As far as payment of arrears of disability element is concerned, since applicant was discharged from service w.e.f. 31.10.2018 and O.A. was filed on 29.07.2019, applicant is entitled to disability element w.e.f. 31.10.2018.

10. Respondents are directed to complete the exercise for payment of disability element to applicant within a period of four months from today. Default shall attract interest @ 8% p.a.

11. No order as to costs.

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

Dated: 03 December, 2020

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