

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 06 of 2017**

Friday, this the 19<sup>th</sup> day of January, 2018

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

Dilip Kumar Gupta (no-14628100 P Ex N.K.) son of Prayag Prasad Gupta Resident of Village Chauby Chhapra P.O. Chhedi Tehsil Bouriya, Distt Balia, U.P. presently residing at C/O Omkar Nath, Sadar Bazar, Cantt Lucknow.

.....**Applicant**

Ld. Counsel for the : **Shri A.P.Singh, Advocate.**  
Applicant

Verses

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer – In – Charge, E.M.E Records, C/o 56 A.P.O PIN-900453.
3. Chairman, Appellate Committee on First Appeal through Director, P.S.-4, AG's Branch I.H.Q, Ministry of Defence (Army) New Delhi-110011.
4. Principal Controller of Defence accounts (Pension), Allahabad.

.....**Respondents**

Ld. Counsel for the : **Dr.S.S.Atal, Sr Standing  
Counsel for Union of India**  
Respondents. assisted by Maj Salen Xaxa,  
OIC Legal Cell.

### **ORDER**

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

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of grant of disability pension from the date of discharge attended with the relief of rounding off of the composite disability assessed at 70% for life.

2. The facts in nutshell are that the Applicant was enrolled in the Indian Army 28.08.1995 and was invalidated out from service on 14.08.2014. The Invalidating Medical Board assessed his composite disability as 70% but opined it neither attributable to nor aggravated by military service. The total service rendered by the Applicant was more than 19 years. The claim for disability pension was rejected by the competent authority vide communication dated 08.07.2015. The first appeal preferred against rejection was also rejected vide communication dated 07.07.2016. The second appeal was

also filed but before it could be decided, the applicant invoked the jurisdiction of this Tribunal.

3. The only ground cited for rejection of the claim for disability pension was that the disability suffered by the applicant was neither attributable to nor aggravated by military service.

4. In the instant case, the applicant was discharged after completion of qualifying service of more than 15 years. It is not disputed that the applicant was invalidated out from service on account of disabilities. On the issue of attributability, the law is well settled by catena of decisions of the Apex Court.

5. In connection with whether the applicant would be entitled to disability pension or not, we may refer to Regulation 173 of Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension which reads as follows:

*"Regulation 173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which attributable to or aggravated by military service in non-battle casualty and is assessed*

*20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*

6. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is attributable to, or aggravated by military service and (ii) who is assessed at 20% or over disability unless otherwise it is specifically proved.

7. The issue of attributability has since been settled by the decision of the Apex Court in Dharamvir **Singh Vs. Union of India and Ors** reported in **(2013) 7 Supreme Court Cases 316**, in which Hon'ble 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).*

8. There is nothing on record to show that the Appellant was suffering from any disease at the time of

his initial recruitment in the Indian Army. Thus, the disease would be deemed to be attributable to or aggravated by the Army Service.

9. In view of the above, we are of the view that the applicant is entitled to disability pension which has been assessed as 70% as composite disability. We are further of the view that since the composite disability was 70% for life, it would stand rounded off to 75% for life.

10. In the result, the O.A is allowed and the impugned orders are set aside. It is directed that the respondents shall be paid disability pension with effect from the date of his being invalidated out from service at the rate of 75% for life. The arrears shall be paid to the Applicant within a period not exceeding four months. For default, the applicant shall be entitled to interest at the rate of 9%.

11. There shall be no order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice Devi Prasad Singh)**  
**Member (J)**

Dated: 19 January, 2018

MH/-