

**Court No.1**  
**Reserved Judgment**

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

**Original Application No. 242 of 2018**

Thursday, this the 20<sup>th</sup> day of December, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

IC-93121X Brig Ved Prakash Shahi  
S/o Sri Ramesh Chandra Shahi  
R/o A-81 Omexe City Post Bra University  
Aurangabad Khalsa  
District - Lucknow (UP)

.....**Applicant**

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. The Chairman ACFA forwarded through MP (5&6), Integrated Headquarter of the Ministry of Defence (Army) West Block, RK Puram, New Delhi – 110066.
4. Additional Directorate General Personal Service Adjutant General's Branch, Integrated Headquarter of the Ministry of Defence (Army), Plot No. 108 (West), Brassy Avenue, Church Road, New Delhi – 110001.

.....**Respondents**

Ld. Counsel for the : **Shri Anurag Mishra,**  
Respondents **Ld. Counsel for Central Govt.**

**ORDER**

**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

*“(a) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the impugned orders dated 06.01.2016 and 04.01.2018 whereby rejecting the claim of the applicant for disability pension since 01.04.2016 annexed as Annexure No. A-1(i)(ii) respectively with the application.*

*“(b) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.*

*“(c) Allow the application with all consequential benefits with exemplary cost. “*

2. The undisputed facts, as averred by the learned counsel for both the parties, are that the applicant was commissioned in the Indian Army on 13.12.1980 and was retired from service on 31.03.2016 (afternoon) on attaining the age of superannuation. At the time of retirement, since the applicant was in low medical category, he was brought before a duly constituted Release Medical Board and the disabilities of the applicant for the disability “**CORONARY ARTERY MYCARDIAL IN FARCTION (POST PCI RCA) SPONDYLOSIS**” was assessed 30% for life and “**DIABETES MELLITUS TYPE-2**” was assessed as 20% for life and both the disabilities were neither attributable to nor aggravated by military service. The claim of the applicant for

grant of disability pension was rejected by the AG/PS-4 (Imp-II) vide order dated 06.01.2016. His first and second appeals were also rejected by First/Second Appellate Committee vide orders dated 20.04.2017 and 04.01.2018 respectively.

3. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present Original Application.

4. We have heard Shri S.G. Singh, Ld. Counsel for the applicant and Shri Anurag Mishra, Ld. Counsel for the respondents and perused the record.

5. Ld. Counsel for the applicant submitted that the applicant was enrolled in the 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 the applicant after joining the service should be attributable to military service and the applicant is entitled to grant of disability pension. In this connection, Ld. Counsel for the applicant has relied upon verdict of Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) AIR SCW 4236.

6. **Per contra**, Learned Counsel for the respondents submitted that disability pension claim of the applicant was rightly rejected as per Regulation 81 of Pension Regulations for the Army 2008, Part-I, which stipulates that unless otherwise

specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service in non battle casualty cases and the disability is assessed 20% or more.

7. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

8. 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*** (supra). 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)."*

9. Thus considering all issues, we feel that denial of attributability to military service only on the ground that the disease started in peace area and not in Fd/HAA/CI Ops tenure amounts to being unfair to the applicant. This amounts to saying that there is no stress & strain of military service in peace area. This doesn't appear to match the ground realities of military service. Therefore, we are of the considered opinion that the benefit of doubt should be given to the applicant in view of the commencement of disease due to stress and strain of

service. Thus, we consider applicant's disease as aggravated by military service.

10. In view of the above, we are of the view that the applicant is held entitled to 30% disability for life which shall stand rounded off to 50% for life in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

11. In view of the above the Original Application deserves to be allowed.

12. Accordingly, the Original Application is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability element to the applicant @ 30% which shall be rounded off to 50% for life from the date of discharge i.e. 01.04.2016. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

13. No order as to cost.

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

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: December, 2018  
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