

RESERVED
COURT NO.1

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

ORIGINAL APPLICATION No. 316 of 2018

Wednesday, this the 16th day of January, 2019

"Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP, Sinha, Member (A)"

Shri Kant Mishra, S/O Sri Shyam Sunder Mishra, R/O
Village-Banshipur, PO-Amilai (via Sakaldiha Bazar),
District-Chandauli (UP), PIN-232109.

.....Applicant

Ld. Counsel for :**Shri Sudhir Kumar Singh**, Advocate.
the applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Air Headquarters, Vayu Bhawan, New Delhi-110106.
3. Air Force Record Office, Subroto Park, New Delhi-110010.
4. Deputy Controller of Defence Accounts (AF), Subroto Park, New Delhi.
5. P.C.D.A. (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the:**Shri Namit Sharma**,
Respondents. Central Government Standing Counsel.

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

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

- (i) *This Hon’ble Court may graciously be pleased to quash the impugned order dated 19.04.2010 (Annexure No A-2) passed by respondent No 3 and order dated 16.05.2012 (Annexure No A-6) passed by respondent No. 2 rejecting the first and second appeals filed by applicant.*
- (ii) *This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 1.1.2011 towards his disability, ‘Primary Hypertension (Old) @ 30% for life (rounding off 50%).*
- (iii) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iv) *Award costs to the applicant.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) on 15.11.1972 and was discharged from service on 31.12.2010 on completion of tenure of engagement. The Release Medical Board (RMB) held on 03.02.2010 assessed his disability **‘Primary Hypertension (Old)/Z 09.0’** @ 30% for life but opined the disability to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 30.03.2010. Thereafter First and Second Appeals

against rejection of disability pension claim were rejected by the competent authority vide order dated 27.01.2011 and 16.05.2012 respectively. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of enrolment and asserted that having served for more than 34 years, on 10.04.2006 he was found to be suffering from vertigo disease i.e. a type of disease related to ear for which he was administered treatment at SMC Subroto Park, AFCME and Research & Referral (R&R) (Army Hospital). During medical treatment the applicant was also found to be suffering from 'Primary Hypertension' and was placed in low medical category A4G4 (T-24) and in subsequent years his medical category was upgraded to A4G2 (P) w.e.f. 06.07.2007 and till retirement he served in low medical category. The Ld. Counsel for the applicant asserted that the applicant has picked up this disability due to stress and strain of Air Force service. Ld. Counsel for the applicant further submitted that prevailing service conditions in the military units are very demanding and put similar stress as that of field posting. Relying upon the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316, Ld. Counsel for the applicant

vehemently argued that the disability of the applicant is principally due to stress and strain of military service as the disability was suffered by the applicant at the fag end of his service and should be considered as aggravated by military service.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension. He further stressed that in the instant case onset of disability was in a peace station and there is no close time association with stress/strain of service as associated with Field/High Altitude/Counter Insurgency Operations. Therefore, disability of the applicant has been conceded as NANA by the RMB. He pleaded for dismissal of the O.A.

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

6. 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*** reported in

(2013) 7 Supreme Court Cases 316. 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, we find that the RMB has denied attributability to the applicant only by endorsing that Hypertension is primary in nature and the onset of disability is in peace (Delhi) area with no close time association with stress/strain of service in Fd/HAA/CI Ops. We feel that such a discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequences of military service. The benefit of doubt therefore shall be rightly extended in favour of the applicant. In the instant case since the applicant was found to be suffering from disability when he had put in 34 years of service, it should be deemed to be aggravated by military service.

8. we are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of***

India & Ors (supra) and the disability of the applicant should be considered as aggravated by military service.

9. 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% disability for life in terms of **Union of India vs Ram Avtar & Ors**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be entitled to disability element @ 30% for life to be rounded off to 50% for life w.e.f. three years prior to filing of the present O.A. This O.A. was filed on 11.10.2017. 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. Default will invite interest @ 9% per annum.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: January, 2019
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