

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 129 of 2021****Wednesday, this the 30<sup>th</sup> day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Army No 14657173-K Ex. Nk. Pragat Singh, S/o Sh Angrej Singh,  
R/o Village- Suthana Barsola & P.O. Tikuniya, Tehsil- Nighsan, Distt –  
Lakhimpur Kheri, U.P. PIN-262906.

..... Applicant

Ld. Counsel for the Applicant: **Shri Ashis Kumar Verma, Advocate**

Versus

1. Union of India through Secretary of Defence, South Block, New Delhi.
2. Chief of Army Staff, IHQ of MoD, Dena Bhawan, New Delhi.
3. Officer-in-charge, Records EME PIN-900453, C/O 56 APO.
4. PCDA (P) Draupadi Ghat Allahabad-211014.

..... Respondents

Ld. Counsel for the Respondents : **Mr Amrita Chakraborty,**  
Central Govt Counsel.**ORDER**

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

“(a) Issue/pass an order or direction setting aside the recommendation of impugned Release Medical Board (Annexure-A-3) AFMSF-16 held on 02.06.2018 in so far as the same hold the disability of the applicant not connected with military service hence neither attributable to nor aggravated by military service, and Order dated 29.08.2018 & 10.06.2019 (Annexure-A-4&5) of denial of disability element

of pension to applicant, after summoning the relevant Original records being arbitrary, unjust without any previous medical record and same is against settled law by the Hon'ble Supreme Court in case titled as Union of India Vs Dharamvir & others.

(b) Issue/pass an order directing the respondents to grant the applicant the disability element of extending the benefit of rounding off from 20% to 50% from date of entitlement 01.01.2018 for life till its payment along with its accrued arrears from the same date with 12% interest pa.

(c) Allow this Original Application and grant a cost of Rs 50,000/- for un-necessary dragging the applicant to move court.

(d) INTERIM ORDER, IF ANY PRAYED FOR: NIL

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 04.01.2003 and was discharged from service on 31.07.2018 in low medical category S1H1A1P2(P)E1. The Release Medical Board (RMB) was held on 21.06.2018 which assessed his disability "**ACYANOTIC CONGENITAL HEART DISEASE OSTIUM PRIMUM ATRIAL SEPTAL DEFECT (OPTD)**" @ 20% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 29.08.2018. Thereafter, first appeal preferred against rejection of disability pension claim was also rejected vide order dated 10.06.2018. Thereafter, second appeal dated 29.01.2020 preferred o rejection of first appeal has not been decided as yet. Now applicant has filed this O.A. for grant of disability pension.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there is 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 considered as attributable to or aggravated by military service and the applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of learned counsel for the applicant is that since the aforesaid disease is due to stress and strain related rigors of military service, it should be considered as either attributable to or aggravated by military service. He pleaded for disability pension to be granted to applicant as has been granted in the case of O.A. No. 718 of 2020 decided on 09.12.2020.

4. On the other hand, learned counsel for the respondents submitted that since RMB has declared the applicant's disability as NANA, he is not entitled to disability pension. His further submission is that the competent authority has rightly rejected applicant's disability pension claim on the ground of disability being of congenital in nature and not related to military service, therefore, O.A. deserves to be dismissed. The learned counsel for the respondents further submitted that the disability is related to malformation of the heart and is, therefore, not attributable to military service. His concluding submission is that since the RMB has declared the disability as congenital in nature therefore it is conceded as neither attributable to

nor aggravated by military service in terms of Para 22 Chap VI of GMO 2002, amendment 2008 and Entitlement Rules 2008. He pleaded for dismissal of O.A.

5. Heard learned 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 and appellate authorities have denied attributability/aggravation to the applicant only by endorsing that the disability of applicant is congenital in nature and it could not be detected when he was recruited. We find that the aforesaid disability was detected for the first time when applicant was posted in J&K area in April, 1997 after two years of enrolment and thereafter he has served for more than 20 years with this disability, which was managed by medication. 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 suffering from this disability for nearly 20 years during service in the Army, for which he is receiving service pension, the disease is deemed to be aggravated by military 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. We are clear that disability pension consists two elements i.e. service element and disability element. Since the applicant is already in receipt of service pension, he is entitled to disability element @ 20% for life which shall be rounded off to 50% for life in terms of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. In view of the above the applicant is held entitled to 20% disability element for life which shall stand rounded off to 50% disability element for life with effect from the date of his discharge.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be granted disability element @ 50% for life w.e.f. 31.07.2018. The respondents are directed to pay 50% disability element along with arrears within four months from today.

11. Default will invite interest @ 8% p.a.
12. No order as to costs.
13. Pending applications, if any, are disposed off.

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

Dated: 30<sup>th</sup> July, 2021

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