

**Court No. 1**

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

**Original Application No. 150 of 2020**

Wednesday, this the 28<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)**

No. 15366625A Sep Dineshwar Tiwari, Son of Shri Jai Murat Tiwari, resident of Raja Rahul City, Near Malak Road, Neelmatha, Lucknow - 226002.

**.... Applicant**

Ld. Counsel for the: **Shri DS Tiwari**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block New Delhi -110011.
3. Office-in-Charge, RecordsDSC, PIN (Army)-900453, C/O 56 APO
4. Principal Controller Defence Account (Pension), Draupadi Ghat, Allahabad (U.P.) 211014.

**... Respondents**

Ld. Counsel for the: **Mrs. Anju Singh**, Advocate  
Respondents. **Central Govt Counsel.**

**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:-

*(a) To set aside/quash the rejection order dated 20.04.2020 passed by respondent No. 3 i.e. OIC Records. The photo copy of the rejection order dated 20.04.2020 is annexed with OA.*

*(b) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from the date of discharge i.e. 01.12.2019 along with Broad Banding to 50% with its arrears and interest thereon at the rate of 18%.*

*(c) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of litigation.*

2. Briefly stated facts of the case are that applicant was re-enrolled in the Defence Security Corps (DSC) on 28.12.2011 and was discharged from service on 30.11.2019 in low medical category P2 (Permanent) in terms of Rule 13 (3) (III) (iii) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 158 Base Hospital, C/O 99 APO on 21.09.2017 assessed his disability **'CORONARY ARTERY DISEASES SVD PTCA LCX (CAD) (125.10)'** @ 20% for life and opined the disability as neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated 20.04.2020. Thereafter, appeal preferred on 22.06.2020 against rejection of disability pension claim has

not been decided as yet. This O.A. has been filed 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 either 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. Placing reliance on the Hon'ble Apex Court in judgments in the case of Dharamvir Singh (Supra), 2013, SCC 316 and Sukhvinder Singh (Supra) Vs UOI & Ors, (2014), 14 SCC 364, learned counsel for the applicant submitted that in view of aforesaid judgments, applicant is entitled to 50% disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that through RMB has assessed applicant's disability element @ 20% for life but it is neither attributable to nor aggravated by military service, therefore, he is not entitled to disability pension. It was further submitted

that his disability pension claim has rightly been rejected by PCDA (P), Allahabad (Prayagraj) on the ground of disability being NANA.

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 the applicant only by endorsing that the disability of applicant is NANA whereas as per para 18 of the RMB it has been correctly mentioned that the disability in question is due to stress and strain of military service as per 14 days charter of duties vide para 47 of Chapter VI of GMO (MP)-2008. We feel that once RMB has declared that the disability in question is due to stress and strain of military service, respondents' contention that it has no relation to military service seems to be not true. 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 consequence 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 more than 02 years of service, it should be 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 Apex 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 20% disability element for life which shall stand rounded off to 50% disability element for life with effect from the date of his discharge in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order is set aside. The respondents are directed to pay 50% disability element along with arrears within four months from today. Default will invite interest @ 8% p.a.

10. No order as to costs.

11. Pending applications, if any, stand disposed off.

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

Dated: 28<sup>th</sup> July, 2021

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