

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 312 of 2020****Friday, this the 2nd day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)JC-194207-L, Sub (Hony Lt) Gajraj Singh S/O Late Pratap Singh, R/O – MIG-II-79
Tatya Tope Nagar, Phase III, Kanpur (U.P.) – 208022.**.... Applicant**Ld. Counsel for the: **Shri Parijaat Belaura**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. Addl Dte Gen of Personnel Service Adjutant General's Branch Integrated Headquarters, Ministry of Defence (Army), L-1 Block, Church Road, New Delhi.
3. Office in Charge, Records The Mech Inf Regiment, PIN-900476, C/O 56 APO.
4. Principal Controller Defence Account (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

... RespondentsLd. Counsel for the: **Shri Arun Kumar Sahu**, Advocate
Respondents**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 grant disability pension @ 50% and round of the same to 70 % giving the benefit of Govt. of India, Min. of Def. Letter dated 31.01.2001, w.e.f date of discharge of applicant i.e. 01.04.2005.

(b) To pay arrears of disability pension along with 12% interest from the date of his discharge i.e. 01.04.2004 till it is actually paid.

(c) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 25.03.1977 and after having served for more than 27 years, he was discharged from service in low medical category 'S1H1A1P2(P)E1' on 31.03.2005. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 13.01.2005 which assessed the applicant to be suffering from (i) '**AORTIC ROOT ENLARGEMENT (106)**' @ 30% for life aggravated by military service and (ii) '**COMPLEX PARTIAL SEIZURES (G40.2)**' @ 20% for life neither attributable to nor aggravated by military service (composite assessment for both disabilities @ 50% for life). Disability pension claim preferred by applicant was rejected by PCDA (P) Allahabad vide order dated 05.07.2005. Thereafter, applicant asked to supply copy of Release Medical Board on 02.04.2018 through RTI. Copy of Release Medical Board (AFMSF-16) dated 13.01.2005 was provided to applicant on 19.04.2018 and he was advised to prefer an appeal to first appellate authority within 30 days but he failed to do so and 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.

4. On the other hand, learned counsel for the respondents submitted that though RMB has declared first disability as aggravated by military service but, since competent Pension Sanctioning Authority has declared both disabilities as NANA

being constitutional in nature, and 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 disease being constitutional in nature and being not related to military service, therefore, O.A. deserves to be dismissed.

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 has conceded the first disability i.e. '**AORTIC ROOT ENLARGEMENT (106)**' @ 30% for life aggravated by military service due to stress and strain of service but second disability '**COMPLEX PARTIAL SEIZURES (G40.2)**' @ 20% for life has regarded as NANA on the ground of disease being Idiopathic and constitutional in nature neither attributable to nor aggravated by military service (composite assessment for both disabilities @ 50% for life). 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, must 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 26 years of service and his first disability was assessed an 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. In view of the above the applicant is held entitled to 50% disability element for life which shall stand rounded off to 75% 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. Applicant is held entitled to rounding off of disability element w.e.f. his date of discharge but due to law of

limitations as held in Hon'ble Apex Court judgment in the case of **Shiv Dass vs Union of India & Ors**, reported in 2007 (3) SLR 445, applicant is entitled to arrears of rounding off of disability element three years prior to filing of this O.A. This O.A. was filed on 04.01.2019.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order is set aside. The respondents are directed to pay 75% disability element alongwith arrears within four months from today.

10. Default will invite interest @ 8% p.a.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (J)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : July 2021

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