

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 253 of 2020**Wednesday, this the 14<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)**

Laliteshwar Choudahry (No. SL-3639 Ex Lt Col)  
 S/o Late Naga Choudhary  
 R/o House No. D-403, Sarawati Apartment, River View Enclave,  
 Sector-4, Gomtinagar Extension, Lucknow (UP) – 226010  
 ..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. Appellate Committee on First Appeal through its Chairman, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
4. Director PS-4, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 419, 'A' Wing, Sena Bhawan, DHQ PO, New Delhi – 110011.
5. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad -211014 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,  
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 setting aside the order/letter dated 31.08.2007 passed/issued by Additional Director General

Personnel Services to the extent of rejecting the claim of the applicant for grant of disability pension for the disabilities 'NIDDM (IGT)' and 'Hypertension', after summoning the relevant original records.

(b) Issue/pass an order directing the respondents to reconsider and grant disability pension for the disabilities 'Niddm' and 'Hypertension' also from the date of retirement including arrears thereof with interest.

(c) Issue/pass an order directing the respondents to extend the benefit of retirement along with arrears and interest.

(d) issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this Original Application with cost."

2. Briefly stated facts of the case are that applicant was Commissioned in the Army on 25.07.1987 and retired from service on 30.04.2007 (AN) on reaching the age of superannuation. At the time of retirement, since, the applicant was in low medical category, he was brought before Release Medical Board (RMB) and his disabilities were assessed (i) "**NIDDM (IGT)**" @ 30% for life, (ii) "**CERVICAL SPONDYLOSIS**" @ 20% for life and (iii) "**HYPERTENSION**" @ 30% for life and composite assessment was @ 50% for life and opined the disabilities (i) and (iii) as neither attributable to nor aggravated by military service (NANA) but the (ii) disability "**CERVICAL SPONDYLOSIS**" was opined as aggravated by military service. Accordingly, applicant was granted disability element @ 20% for life for (ii) disability "**CERVICAL SPONDYLOSIS**" vide PPO dated 22.11.2007. No disability element was granted for (i) and (iii) disability being NANA vide letter dated 31.08.2007. The applicant

preferred an appeal dated 31.10.2007 to the First Appellate Committee but no reply has been received by the applicant till the date of filing of O.A. Hence, the applicant has preferred the present O.A. for grant of disability element for the balance two disabilities.

3. Learned Counsel for the applicant pleaded that at the time of commissioned in the Army, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of commissioning. The disease of the applicant was contracted during the service, hence, it is attributable to and aggravated by Military Service. He further submitted that case of the applicant is covered with Para 173 of Pension Regulations for the Army, 1961, Entitlement Rules for Casualty Pensionary Awards, 1982, Para 423 (c) of the Pension Regulations for the Army and Para 53 of Pension Regulations for the Army, 1961 and pleaded that applicant be granted disability pension @ 50% duly rounded off to 75% in view of Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents submitted that disabilities of the applicant were assessed (i) "**NIDDM (IGT)**" @ 30% for life, (ii) "**CERVICAL SPONDYLOSIS**" @ 20% for life and (iii) "**HYPERTENSION**" @ 30% for life and composite assessment was @ 50% for life and opined the disabilities (i) and (iii) as neither attributable to nor aggravated by military service (NANA) but the (ii) disability was opined as aggravated by military service for which applicant is in receipt of 20% disability element for life. The other two disabilities (i) & (iii) have not been granted being NANA.

5. Ld. Counsel for the respondents placed reliance on the judgments of the Hon'ble Apex Court in Civil Appeal No. 1837/2009, **Union of India vs. Ex Rfn Ravinder Kumar**, decided on 23.05.2012 and **Ex Cfn Narsingh Yadav vs. Union of India and Others**, decided on 03.10.2019 and Para 173 of Pension Regulations for the Army 1961 (Part-1) revised vide Rule 53 (a) of pension Regulations for the Army 2008 (Part-1) and submitted that applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability element for balance two disabilities being NANA. Though, at the end of hearing of the case, learned counsel for the respondents agreed to grant of disability element for the balance of two disabilities as per the Hon'ble Apex Court judgments on the subject.

6. 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?

7. 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 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 invalidated 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)."*

8. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for his both disabilities (i) **"NIDDM (IGT)" @ 30% for life** and (iii) **"HYPERTENSION" @ 30% for life** for the reason by declaring the diseases as NANA and (i) disability being constitutional in nature and not connected with service and (iii) disability being originated in peace area. However, on further scrutiny, we have observed that (i) disability was initially detected in the year

2002 and (iii) disability was initially detected in the year 2006 after about 15/19 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring both disabilities as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his both disabilities should be considered as aggravated by military service.

9. In view of the above, applicant is held entitled to 50% disability element for life from the date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element from 50% to 75% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order passed by the respondents is set aside. The disabilities (i) "**NIDDM (IGT)**" and (iii) "**HYPERTENSION**" of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 50% for life duly rounded off to 75% for life from the date of discharge from service. As the applicant is already in receipt of 20% disability element for life for his (ii) disability "**CERVICAL SPONDYLOSIS**", the respondents are directed to grant total disability element @ 75% for

life from the date of retirement from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass vs. Union of India and others** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 17.09.2020. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

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

Dated: July, 2021  
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