

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 398 of 2020**Thursday, this the 15<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)**Guptesh Kumar, Ex LSTD 15336K  
S/o Shri Gyan Das  
R/o 41-CD, Adarsh Nagar, Alambagh, Lucknow

..... Applicant

Ld. Counsel for the Applicant : **Shri S. Chandra**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, DHQ PO, New Delhi.
2. Chief of Naval Staff, Integrated Headquarters (Navy), New Delhi.
3. The Principal Director, Dte of Pay and Allowances, IHQ-MOD(N), D-II Wing, Sena Bhawan, New Delhi.
4. Commander, Bureau of Sailors, Cheetah Camp Mankhurd, Mumbai.

..... Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey**,  
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:-

“(i) This Hon'ble court may kindly be pleased to quash the order date 31.08.2008 (Annexure No. 1), appellate order dated 18.02.2009 (Annexure No. 2) and 25.05.2018 (Annexure No. 3) passed by the opposite parties and the respondent may kindly be directed to pay the disability pension to the applicant since

the date of discharge from service with all consequential benefits in the interest of justice.

(ii) This Hon'ble court may kindly be pleased to direct the opposite parties may be directed to allow and pay the interest @ 18% on the amount of disability pension till the date of actual payment.

(iii) In addition to above relief, if this Hon'ble Tribunal may deem fit and proper to grant any other relief, the same may kindly be granted to him in the interest of justice."

2. Briefly stated facts of the case are that applicant was enrolled in the Navy 04.08.1993 and was discharged from service on 31.08.2008 in low medical category after rendering more than 15 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **"OTHER NON-ORGANIX PSYCHOSIS ICD-F28"** @ 15-19% for life and (ii) **"CATARACT BOTH EYE OPTD"** @ 20% for life as neither attributable to nor aggravate by military service, however, composite and the net assessment qualifying for disability pension was recorded as 'NIL'. Therefore, his claim for grant of disability pension was rejected by the competent authority vide letter dated 31.08.2008 as the disabilities were NANA. Thereafter, applicant approached this Tribunal against the rejection of his disability pension claim by filing O.A. No. 231 of 2015. This Tribunal vide order dated 29.03.2017, has directed the respondents to hold RSMB to ascertain the composite percentage and duration of disability. Accordingly, RSMB was conducted and approved on 04.08.2017 and assessed his disabilities (i) **"OTHER NON-ORGANIX PSYCHOSIS ICD-F28"** @ 70% for life and (ii) **"CATARACT BOTH EYE OPTD"** @ 15-19% for life as

neither attributable to nor aggravated by military service. The composite assessment for both the disabilities was recorded @ 76% for life. However, net assessment and duration was recorded as 'NIL' for life for both disabilities. The board has also clarified that his first disability "**OTHER NON-ORGANIX PSYCHOSIS ICD-F28**" has deteriorated due to natural cause of illness and second disability "**CATARACT BOTH EYE OPTD**" is static. On receipt of RSMB documents, this Tribunal vide order dated 30.10.2017 has passed the directions to the respondents to consider the case for grant of disability pension but the case of the applicant was re-examined by the competent authority and was rejected vide order dated 25.05.2018. Thereafter, an Execution Application was also filed by the applicant which was dismissed as infructuous vide order dated 04.12.2018. Being aggrieved, the applicant has preferred the present O.A. for grant of disability pension.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, 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 enrolment. The disease of the applicant was contracted during the service, hence, it is attributable to and aggravated by Military Service. He further submitted that on the directions of this Tribunal, RSMB has been conducted and applicant's both disabilities have been assessed more than 90%, hence, applicant should be granted disability pension in view of various judgments passed by the Hon'ble Apex Court on the subject.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant have been assessed composite @ 76% for life by RSMB as neither attributable to nor aggravated by military service. However, net assessment and duration was recorded as 'NIL' for life long for both the disabilities in RSMB proceedings. Therefore, as per Regulation 101 of Navy Pension Regulations, 1964 applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension. He pleaded for dismissal of the 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 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/aggravation, we find that the RMB and thereafter RSMB has denied attributability/aggravation to applicant for his both disabilities (i) **“OTHER NON-ORGANIX PSYCHOSIS ICD-F28”** and (ii) **“CATARACT BOTH EYE OPTD”** for the reason by declaring the diseases as NANA and it is originated in peace areas. However, on further scrutiny, we have observed that first disability was initially detected in the year 2006 after about 13 years of service and second disability was initially detected in the year 2003 after about 10 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.

8. In view of the above, applicant is held entitled to 76% disability element for life from the date of approval of RSMB proceedings i.e. 04.08.2017. The applicant will also be eligible for the benefit of rounding off of disability element from 76% to 100% 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).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 76% for life duly rounded off to 100% for life from the date of approval of RSMB proceedings i.e. 04.08.2017. The respondents are directed to grant disability element @ 100% for life from the date of approval of RSMB proceedings i.e. 04.08.2017. 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.

10. 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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