

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 118 of 2018**Monday, this the 15th day of July 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

DS Jasrotia (IC-27308X Ex Lt Col), son of Shri Amar Singh, R/O House No 112 (A), Raksha Vihar, Near 3 EME Centre, Bhopal-462031, presently residing at C/O Col Rahul Harchand, Commandant, COD Cheeki, Allahabad (UP).

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office-New Delhi-110011.
3. Adjutant General's Branch (MP-6(f), Integrated HQ of MoD (Army), West Block-III, RK Puram, New Delhi-110066.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

.....Respondents

Ld. Counsel for the : **Shri Arun Kumar Sahu**,
Respondents. Central Govt. Standing Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

- (a) *Hon’ble Tribunal may be pleased to set aside the Order dated 07.09.2007 (Annexure No A-1) and order dated 10.06.2016 (Annexure No A-2).*
- (b) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.01.1998 for life along with the interest at the rate of 18% per annum.*
- (c) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar’s case.*
- (d) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 09 years, 09 months and 09 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 19.02.2018.

3. Brief facts of the case are that the applicant was commissioned in the Indian Army on 24.12.1972 and was discharged from service in low medical category S1H1A3P2E1 (Permt) on 31.12.1997. The Release Medical Board (RMB) held at Military Hospital, Bhopal on 28.08.1997 assessed his disabilities (i) I.H.D. ICDN 411 (CAD) @ 11-14% for two years and (ii) Ankylosing Spondylitis @ 11-14% for two years (composite assessment @ 20% for two years) neither attributable to nor aggravated (NANA) by military service. Disability pension claim was rejected vide order dated 07.09.2007. It is in this perspective that the applicant has preferred the present O.A.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of commission as an officer. He had picked up these diseases due to stress and strain of service. However the competent authority has rejected the claim on grounds of the disabilities being NANA. He pleaded that the disability element for both the diseases/disabilities be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents initially contended that the applicant has approached the Tribunal after a gap of 20 years and such inordinate delay cannot be condoned at this stage in view dismissal of O.A. No. 90 of 2016, ex Capt Srinivasan Narayanan, AFT Chennai, O.A. No. 1915 of 2017, Col Opendra Kumar Verma, AFT, Principal Bench, New Delhi and O.A. No. 1987 of 2017, Lt Col Chaitanya K Agarwal, AFT, Principal Bench New Delhi. This contention of the respondents is not conceded primarily because pension is a recurring cause of action and therefore we proceed further to hear and decide the case. Ld. Counsel for the respondents further contended that disabilities of the applicant have been regarded as NANA by the RMB (supra), hence the applicant is not entitled to disability pension. Referring para 173 of Pension Regulations for the Army, 1961 (Part-I), Ld. Counsel for the respondents further submitted that an incumbent is granted disability pension when invalidated out of service on account of disability which is attributable to or aggravated by military service and is assessed @ 20% or over. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB

and rejection order dated 07.09.2007. The question before us is simple and straight i.e.-are the disabilities of applicant attributable to or aggravated by military service?

7. The law on attributability/aggravation of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** reported in (2013) 7 Supreme Court Cases 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 reason's [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. Additionally, it is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused

subsequently unless proved to the contrary. In this context we have also referred to medical guide wherein it has been clearly mentioned that 'Ankylosing Spondylitis' is an inflammatory disease that, over time, can cause some of the vertebrae in spine to fuse. This fusing makes the spine less flexible and can result in a hunched-forward posture. This disease has no known specific cause, though genetic factors seem to be involved'. Since the cause of disease is not clearly known and there is no mention of genetic loading in RMB, therefore, we are of the view that the benefit of doubt should rightly be extended in favour of the applicant.

9. Thus considering all issues and 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 a cryptic sentence that the disability is not connected with military service vide AFMSF-16 dated 28.08.1997. We do not find this cryptic remark adequate to deny attributability/aggravation to an incumbent who was fully fit since his commission and the diseases in question had started in later years. We are therefore of the considered opinion that the benefit of doubt should be given to the applicant in view of ***Dharamvir Singh*** (supra) and the disabilities of the applicant i.e. (i) I.H.D. ICDN 411 (CAD) and (ii) Ankylosing Spondylitis should be considered as aggravated by military service.

10. In view of the above, we are of the considered opinion that the applicant is held entitled to 20% disability element (composite) for both the disabilities for two years after discharge which would stand rounded off to 50% for two years from the date of his discharge in

terms of Hon'ble Apex Court judgment delivered in the case of **Ram Avtar vs Union of India & Ors** decided in Civil Appeal No 418 of 2012 dated 10th December 2014. However, Hon'ble the Apex Court in the case of **Shiv Dass vs Union of India & Ors** reported in 2007 (3) SLR 445 has held that arrears of disability pension are to be restricted to three years prior to filing of the O.A. if the same has been filed belatedly and the delay is condoned. Since the applicant has approached this Tribunal after a gap of more than 09 years, he is not entitled to any arrears at this stage for the period of two years after his discharge, due to law of limitations as settled in the case of **Shiv Dass** (supra).

11. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order dated 07.09.2007 is set aside. Applicant's both disabilities @ 20% (composite) are to be considered as aggravated by military service. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to the outcome of the RSMB.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: July, 2019
gsr

(Justice S.V.S. Rathore)
Member (J)