

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 244 of 2018**Monday, this the 15<sup>th</sup> day of July 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No JC-425591N Nb Sub Surendra Singh, son of Sri Hari Singh resident of village Banthali, Post Office-Shrikotkhal, District-Pauri Garhwal-246131, Uttrakhand.

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate.  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter Ministry of Defence (Army), New Delhi.
3. Officer I.C. Records, Bengal Engineer Group, PIN-908779, C/O 56 APO.
4. PCDA (Pen), Allahabad.

.....Respondents

Ld. Counsel for the  
Respondents.**:Ms Anju Singh,**  
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) *Issue/pass an order or direction of the appropriate nature to the respondents, to quash/set aside the Bengal Engineer Group Records letter No Pen/D-JC-325591/R dated 14 August, 2017 (Annexure A-1(i) and Annexure A-1 (ii) vide which the disability pension claim has been rejected.*
- (b) *Issue/pass an order or direction of the appropriate nature to the respondents, to grant disability element from the date of discharge i.e. 30 April, 2001 for life with 9% interest on the arrears.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow the application with cost.*

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 approx 16 years. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 27.04.2018.

3. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 20.04.1975 and after having completed more than 26 years of service he was discharged from service in low medical category S1H1A1P2E1 (permt) on 30.04.2001 in terms of Rule 13 (3) I (i) (a) of Army Rules, 1954. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held at Military Hospital, Roorkee on 23.09.2000 which assessed the applicant to be suffering from ‘Peripheral Vascular Disease TAO

682' @ 15-19% for two years and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 08.10.2001. First Appeal against rejection of disability pension claim was turned down vide order dated 14.08.2017 because it was not filed within the specified time frame. Hence this O.A.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was 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 in terms of para 423 (c) of Pension Regulations for the Army and the applicant should be entitled to disability pension. Ld. 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 Ld. Counsel for the applicant is that the applicant, on 15.01.1997 while posted at Purkaji, was diagnosed to be suffering from 'Peripheral Vascular Disease TAO 582'. This disease he feels is due to stress and strain related rigors of military service. He concluded by pleading for grant of disability pension to the applicant.

5. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disability as NANA. Ld. Counsel further submitted that the competent authority had rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

6. Heard the 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?

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 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 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 the applicant only by endorsing a cryptic sentence in the proceedings i.e. 'No relation to service condition'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started on 15.01.1997 i.e. after completion of about 22 years of his 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.

9. In view of the above the applicant is held entitled to 15-19% disability element for two years which shall stand rounded off to 50% disability element for two years 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).

10. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order dated 08.10.2001 (Annexure No 2 to the C.A.), is set aside. The disability of the applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is extended. As far as payment of arrears of disability element is concerned, 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 restricted to three years prior to filing of the O.A. if the same is filed belatedly and delay is condoned. Since the applicant has approached this Tribunal after a gap of more than 16 years and has filed this O.A. on 09.10.2017 therefore, he is not entitled to any arrears for two years after discharge due to law of limitations as settled in the case of **Shiv Dass** (supra). 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

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

