

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 566 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 9512583-W Ex-Hav Shailendra Pratap Singh S/O Phool Bahadur Singh, resident of House No A-68, Pragati Vihar, Post Office-Vikas Nagar, Kalyanpur, District-Lucknow.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Sena Bhawan, New Delhi, PIN-110011.
3. Senior Record Officer, OIC Record, Sena Shiksha Corps Abhilekh Karyalay, PIN-908777, C/O 56 APO.
4. The Director, PS-4, Additional Directorate General of Personnel Services, Adj. Gen's Branch, IHQ of MoD (Army), PIN-900256, C/O 56 APO.
5. Principle Controller of Defence Accounts, Draupadi Ghat, Allahabad-14.

.....Respondents

Ld. Counsel for the  
Respondents.:**Shri R.C. Shukla**,  
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) *To quash the impugned order 20.11.2011, 11.02.2017 and 15.07.2017, passed by OP No 3, which is annexed as Annexure No 1, 2 & 3 to this original application.*
- (b) *To pass an order or direction commanding the respondents to grant the disability pension of the applicant from the date of discharge i.e. 01.11.2011.*
- (c) *To pass an order or direction commanding the respondents to pay the arrear of the disability pension from the date of discharge i.e. 01.11.2011 along with the interest @ 18% per annum till actual realization of the aforesaid amount.*
- (d) *To pass an order or direction commanding the respondents to grant the benefits of rounding off his disability pension to the tune of 50% in terms of Govt of India letter dated 31.01.2001 and various judgments of Apex Court as well as this Hon’ble Tribunal.*
- (e) *To pass an order which this Hon’ble Tribunal deem fit and just under the facts and circumstances of the case, in favour of the applicant.*
- (f) *Allow the Original Application with exemplary 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 about 07 years after his discharge. However, since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 27.11.2018.

3. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 01.03.1996 and after having completed more than 15 years of service he was discharged from service at his own request in low medical category S1H1A1P2E1 (permt) on 31.10.2011 in

terms of Rule 13 (3) III (iv) of Army Rules, 1954. Prior to discharge from service, the applicant was brought before Release Medical Board (RMB) held at 166 Military Hospital on 13.06.2011 which found the applicant to be suffering from 'Primary Hypertension (I-10)' and assessed his disability @ 30% for life 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 20.11.2011. First and second Appeals have been rejected vide orders dated 11.02.2017 and 15.07.2017 respectively on the ground of delay while preferring the appeals. Hence this O.A.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in a 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, during March 2004 while posted at Roorkee, was diagnosed to be suffering from 'Primary

Hypertension (I-10)'. This disease he feels is due to stress and strain related rigors of military service as the applicant has served seven tenures in Field/Modified Field/Counter Insurgency Areas in his 15 years of service. He concluded by pleading for grant of disability pension to the applicant.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension. He further submitted that the applicant after having been placed in low medical category, was willing to continue in service. Accordingly he was provided sheltered appointment to enable him to complete his pensionable service. On 06.12.2010 the applicant submitted an unwillingness certificate to continue in service and was discharged at his own request. It was further averred that the disability of the applicant was viewed as NANA and not connected with service by the duly constituted RMB. The same was upheld by the competent authority while rejecting his disability pension claim. The Ld. Counsel for the respondents orally admitted that disability pension is granted to a person who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or above, but in the instant case the disability of the applicant was regarded as NANA by the RMB hence the competent authority has rejected his disability pension claim. 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 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. After VI<sup>th</sup> Central Pay Commission i.e. w.e.f. 01.01.2006, military personnel proceeding on discharge on compassionate grounds due to own request are also eligible for disability pension. Additionally, 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 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 that the disability is not connected with military service because the disability has been detected in peace station. However while scrutinising the records we have observed that the applicant's disease was detected in April 2004 i.e. about 11 months after coming on posting from a Modified Field Area location. We have also noticed that immediately before the Modified Field Area tenure, the applicant had done a Field Area tenure. Thus we find that denial of attributability/aggravation merely because the disease was detected in a peace station and not in a Field Area will amount to miscarriage of justice. 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

disability of the applicant i.e. 'Primary Hypertension (I-10)' @ 30% should be considered as aggravated by military service.

9. In view of the above, we are of the view that the applicant is held entitled to 30% disability element for life which would stand rounded off to 50% disability element for life in terms of ***Union of India and Ors vs Ram Avtar & Ors*** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014).

10. However, since the applicant did not exercise his option to appeal against the rejection of disability pension within a reasonable time and has approached this Tribunal after a long delay, therefore the financial benefits of disability pension will be limited to three years prior to filing this O.A. as per Hon'ble Apex Court judgment in the case of ***Shiv Dass vs Union of India & Ors***, reported in 2007 (3) SLR 445.

11. As a result of foregoing discussion, the O.A. deserves to be **partly allowed**, hence allowed. The impugned orders are set aside. The applicant's disability 'Primary Hypertension (I-10)' is considered to be aggravated by military service and he shall be entitled to disability element @ 30% for life to be rounded off to 50% for life in terms of Hon'ble Apex Court judgment in the case of ***Ram Avtar vs Union of India & Ors***, (Civil Appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014) w.e.f. his date of discharge. However in light of Hon'ble Apex Court judgment in the case of ***Shiv Dass*** (supra) the arrears of

disability pension will be restricted to three years prior to filing of the O.A. The date of filing of this O.A. is 01.05.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

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

Dated: July, 2019  
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