

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 183 of 2022**Friday, this the 8<sup>th</sup> day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. JC-373599-A Nb Sub Gajadhar Prasad  
S/o Late Dewata Din,  
R/o Vill : Pure Loharan, PO – Rahwan,  
Distt – Raebareilly (UP) – 229303

..... Applicant

Ld. Counsel for the Applicant : **Shri Dharam Raj Singh &**  
**Dr. Ashish Asthana, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-charge Records, Signal Records, PIN 908770, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.
5. The Branch Manager, State Bank of India, Super Market, Raebareilly (UP) – 221241.
6. The Chief Manager, State Bank of India, Central Pension Processing Cell (CPPC), Kutchery Road, Prayagraj (Allahabad), U.P.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh,**  
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. To issue/pass an order or direction of set aside/quash the order/letter dated 26.06.2012 passed by respondents, which is being annexed as Annexure No. A-1 to this Original Application.
- B. To issue/pass an order or directions to the respondents for grant of disability element of disability pension for ID (ii) CAD INF WALL MI SVD PTCA RCA DONE as per the percentage assessment made out in Release Medical Board proceedings and further in fresh Re-Survey Medical Board proceedings w.e.f. 02.11.2004 (date of invalidment/discharge i.e. 01.11.2004) alongwith @ 12% interest on arrear.
- C. To issue/pass an order or directions to the respondents for grant of benefit of rounding off the disability pension for ID (ii) CAD INF WALL MI SVD PTCA RCA DONE to the tune of @ 75% w.e.f. 02.11.2004 (date of invalidment/discharge i.e. 01.11.2004) alongwith 12% interest on arrear in light of Hon’ble Apex Court judgment.
- D. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- E. To allow this original application with costs.”

2. Briefly stated facts of the case are that applicant was enrolled in the Army on 26.10.1978 and was discharged from service on 31.10.2004 in low medical category P2 (Permanent) after serving more than 26 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **“CHRONIC DUODENAL ULCER OLD (OPTD)” @ 20% for life** and (ii) **“CAD INF WALL MI SVD PTCA RCA DONE” @ 40% for life (composite @ 60% for life)** and both the

disabilities were considered as aggravated by military service. His claim for grant of disability pension was accepted @ 20% for life for first disability and second disability was rejected considering it as NANA by the Medical Advisor (Pension). The applicant filed a case No. 225 of 2019 before this Tribunal for grant of disability element @ 60% for life as per recommendations of RMB. This Tribunal allowed first disability @ 20% to be rounded off to 50% for life vide order dated 03.04.2019 and respondents were further directed to conduct RSMB of the applicant with regard to assessment of second disability. The RAMB of the applicant was conducted on 23.10.2020 at Command Hospital, Lucknow in which second disability of the applicant has been assessed @ 60% for life (composite @ 68% for life) but considered it as NANA. Accordingly, this Tribunal vide order dated 03.12.2021 directed that applicant is entitled to get disabilities @ 68% duly rounded off to 75% for life and respondents were directed to issue fresh Corrigendum PPO granting 75% disability element to the applicant. However, applicant has been denied 75% disability element by the respondents. Being aggrieved, the applicant has preferred the present O.A. for grant of 75% disability element.

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 Release Medical Board (RMB) assessed his disabilities (i) "**CHRONIC DUODENAL ULCER OLD (OPTD)**" @ 20% for life and (ii) "**CAD INF WALL MI SVD PTCA RCA DONE**" @ 40% for life (composite @

60% for life) and both the disabilities were considered as aggravated by military service. His claim for grant of disability pension was accepted @ 20% for life for first disability vide PPO No. DE/011393/2005 and applicant is in receipt of 50% disability element duly rounded off but second disability was rejected considering it as NANA by the Medical Advisor (Pension). The applicant preferred a representation dated 09.06.2012 for grant of 60% disability element duly rounded off to 75% for life for his both disabilities but the same was rejected by the respondents.

4. Learned Counsel for the applicant further submitted that applicant filed a case O.A. No. 225 of 2019 before this Tribunal for grant of disability element @ 60% for life duly rounded off to 75% as per RMB recommendations being disabilities aggravated by military service. This Tribunal allowed first disability @ 20% to be rounded off to 50% for life vide order dated 03.04.2019 and also directed to conduct RSMB of the applicant with regard to attributability/assessment of his second disability. The RAMB of the applicant was conducted on 23.10.2020 at Command Hospital, Lucknow in which second disability of the applicant has been assessed @ 60% for life (composite @ 68% for life) but considered it as NANA which is contrary to RMB because the percentage of disablement had been increased from 40% to 60% which shows that the said disability was aggravated by military service and percentage had been increased in fresh RSMB/RAMB, hence not considering the disability as attributable and aggravated is illegal and arbitrary in manner which has been done deliberately just to deprive the applicant for his legal

and rightful claim for which he is still suffering. Hence, second disability of the applicant is attributable to and aggravated by Military Service and applicant should be granted disability element for his second disability in view of judgment passed by the Hon'ble Apex Court in ***Dharamvir Singh v. Union of India***, Civil Appeal No. 4949/2013, decided on 02.07.2013 and benefit of rounding of in view of the Hon'ble Apex Court judgment in **Ram Avtar** and Govt. of India letter dated 31.01.2001.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 31.10.2004 in low medical category P2 (Permanent) under Army Rule 13 (3) I (i) (a) on completion of tenure of service after serving more than 26 years of service. The Release Medical Board (RMB) assessed his disabilities (i) "**CHRONIC DUODENAL ULCER OLD (OPTD)**" @ 20% for life and (ii) "**CAD INF WALL MI SVD PTCA RCA DONE**" @ 40% for life (composite @ 60% for life) and both the disabilities were considered as aggravated by military service. His claim for grant of disability pension was accepted @ 20% for life for first disability and second disability was rejected considering it as NANA by the Medical Advisor (Pension) attached to PCDA (P) Allahabad. The applicant filed a case O.A. No. 225 of 2019 before this Tribunal for grant of disability element @ 60% for life as recommended by RMB. This Tribunal allowed first disability @ 20% to be rounded off to 50% for life vide order dated 03.04.2019 and respondents were also directed to conduct RSMB/RAMB of the applicant with regard to assessment of his second disability. The RAMB of the applicant was conducted on

23.10.2020 at Command Hospital, Lucknow in which second disability of the applicant has been assessed @ 60% for life (composite @ 68% for life) but considered it as NANA. Accordingly, this Tribunal vide order dated 03.12.2021 directed that applicant's second disability which existed at the time of discharge is still continuing with 60% for life and therefore, applicant is entitled to get disabilities @ 68% duly rounded off to 75% for life and respondents were directed to issue fresh Corrigendum PPO granting 75% disability element to the applicant. The order of this Tribunal dated 03.12.2021 was not complied with by the respondents as applicant was denied disability element @ 75% for life stating that second disability of the applicant is viewed as NANA by RAMB.

6. Learned counsel for the respondents further submitted that since the applicant is already getting disability element @ 50% for life for his first disability and second disability has been viewed as NANA by the competent authority, he is not entitled to 75% disability element and hence, Original Application is liable to be dismissed.

7. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RSMB/RAMB and the rejection order of disability pension claim. The question before us is simple and straight is that second disability of applicant is aggravated by military service or not?

8. 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)."*

9. In view of the settled position of law on attributability/aggravation, The second disability of the applicant which has been considered as aggravated by military service by the RMB but by RSMB/RAMB, it has been considered as NANA being not connected with service and disease originated in peace area. However, on further scrutiny, we have observed that this disability

was detected in June 2003, after 25 years of service. We are, therefore, of the considered opinion that the reasons given in RSMB for declaring second disability 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 second disability is considered as aggravated by military service.

10. Since the applicant is already getting his first disability @ 20% duly rounded off to 50% for life as per PPO No. DE/011393/2005, the applicant is now held entitled to 68% disability element for life from the date of approval of RSMB/RAMB proceedings i.e. 23.10.2020. The applicant will also be eligible for the benefit of rounding off of disability element from 68% 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).

11. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order passed by the respondents is set aside. The second disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to total disability element of pension @ 68% for life duly rounded off to 75% for life from the date of approval of RSMB proceedings i.e. 23.10.2020. The respondents are directed to grant disability element @ 75% for life from the date of approval of RSMB proceedings i.e. 23.10.2020 and issue

Corrigendum PPO granting arrears accordingly. 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.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: July, 2022  
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