

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 325 of 2020**Monday, this the 26<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)**

Ex Rect Aman Singh (15595445K)

S/o Madhav Singh

R/o Village – Mihinpurwa, PO – Mihinpurwa (Badi Bazar),

District – Bahraich – 271805 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Sena Bhawan, Rafi Marg, New Delhi-110011.
3. Addl Dte Gen of Pers Services, AG's Branch/PS-4 (Imp-II), IHQ of MoD (Army), DHQ PO, New Delhi-110011.
4. OIC Records, Bombay Engineer Group, PIN 908796, C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Prayagraj-211014.

..... 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 allow the application of the applicant and set aside the order dated 11.09.2019 (Annexure No. A-1) passed by respondent No. 4 vide which grant of disability pension to the applicant has been denied.

B. To issue suitable orders/directions commanding the respondents to grant disability pension to the applicant for life and to pay the arrears accrued thereon from the date of discharge from Army service.

C. Any other relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case, may be granted in favour of the applicant.

D. Award the cost of Original Application in favour of the applicant.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 21.09.2017 and was invalided out from service on 06.07.2019 in low medical category S5 under Rule 13 (3) IV of Army Rules, 1954 after rendering 1 year, 09 months and 15 days of service. The Invaliding Medical Board (IMB) assessed his disability “**RECURRENT DEPRESSIVE DISORDER CURRENT EPISODE SEVERE**” @ 40% for life and net assessment qualifying for disability pension NIL for life and opined the disability as neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected by the competent authority vide their letter dated 11.09.2019. The applicant submitted first appeal dated 15.10.2019 which was also rejected vide order dated 19.05.2020. It is in this perspective that the applicant has preferred the present O.A.

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 Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during

the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of IMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of Civil Appeal No. 4949 of 2013, ***Dharamvir Singh vs. UOI & Ors***, decided on 02.07.2013 and pleaded that applicant be granted disability pension @ 40% duly rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "**RECURRENT DEPRESSIVE DISORDER CURRENT EPISODE SEVERE**" has been regarded as 40% for life by IMB as neither attributable to nor aggravated by military service and not connected with service. Hence, as per Rule 53(a) of Pension Regulations for the Army, 2008 (Part-1) and Govt. of India, Ministry of Defence letter dated 16.07.2020, applicant 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 IMB 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 IMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disability not connected to military service as per para 54 of Ch-VI of GMO (MP) 2008'. 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 started during service on 08.03.2018, therefore, we are

of the considered opinion that the benefit of doubt should be given to applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 40% disability pension for life from his date of invaliding from service. The applicant will also be eligible for the benefit of rounding off of disability pension from 40% to 50% 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 order passed by the respondents is set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability pension @ 40% for life from the date of invaliding from service. The respondents are directed to grant disability pension @ 50% for life from the date of invaliding from service. 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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