

**(Reserved Judgment)**  
**Court No.1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 555 of 2018**

Tuesday, this the 26<sup>th</sup> day of March, 2019

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Army No.6934003F, Havildar Vimlesh Sharma, permanent resident of Village & Post Karsawan, Aurangabad, Tehsil Obara, District Aurangabad, presently residing at 5B/11, Girdhar Kunj, Raebareli Road, Telibagh, Lucknow (UP).

.....Applicant

Ld. Counsel for : **Shri S.S. Rajawat, Advocate**  
the Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ PO New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi- 110011.
3. Officer Commanding the Records, C/o DA (Pension) Draupadi Ghat, Allahabad (U.P.).
4. Principal Controller of Defence Accounts PCDA (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Ld. Counsel for the : **Shri Ramesh Chandra Shukla,**  
Respondents **Advocate**

**ORDER**

**“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”**

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

“(a) to set aside the impugned opinion of Release Medical Board, wherein the disability claim of the applicant has been rejected by the respondents;

(b) to direct the respondents for declaring the disability Primary Hypertension of the applicant, as attributable to or aggravated by the military service and grant the disability element of disability pension from the date of his discharge i.e. 31.12.2017 from the service with rounding off facility to 50% with interest of 18% per annum with arrears;

(c) to pass such other orders/directions as deemed fit as required in the facts and circumstances of the present case.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 28.12.1991 in medically fit condition and was discharged from service with effect from 31.12.2017 under Army rule 13 (3) III (i) on completion of 26 years and 04 days of service. The medical board held before discharge considered the disability for '**PRIMARY HYPERTENTION**' as neither attributable to nor aggravated by military service and assessed it as 30% for life. The case for disability pension was rejected by the respondents and communicated to the applicant vide letter dated 26.12.2017 of Army Ordnance Corps Records. The applicant preferred appeal against the said order on 04.01.2018. The first appeal of the applicant was rejected by the Integrated Headquarters of Ministry of Defence (Army) vide letter dated 11.07.2018. It appears from the pleadings on record that the applicant instead preferring any second appeal has preferred the present O.A.

3. The respondents have filed counter affidavit denying the claim of the applicant stating that he was discharged from service on attaining the age of superannuation after rendering

total 26 years and 04 days of regular service. That the RMB assessed his disability for 'Primay Hypertension' @ 30% for life opining that the same is neither attributable to nor aggravated by Air Force Service. It has also been pleaded that first appellate committee upheld the recommendations of RMB and rejected the disability pension claim. Accordingly it has been pleaded by the respondents that the grounds taken by the applicant are not sustainable and the applicant is not entitled to disability pension.

4. We have heard Shri S.S. Rajawat, Ld. Counsel for the applicant and Shri Ramesh Chandra Shukla, Ld. Counsel for the respondents and perused the record.

5. The only question which we need to answer in this case is as to whether the disability of the applicant is attributable to or aggravated by military service ?.

6. The law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and 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)."*

7. The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh** (CA No. 2904 of 2011 decided on 13.2.2015); **Union of India and others v. Manjit Singh** (CA No. 4357-58 of 2015 (arising out of SLP ( C) No. 13732-33 of 2015) decided on 12.5.2015); **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011); **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; OA 621 of 2014, **Bharat Kumar Vs UOI & Ors**; OA 1235 of 2014 **Hoshiar**

**Singh Vs UOI & Ors.** and OA 480 of 2015 **Jasbir Singh Vs UOI & Ors.** and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) decided on 11.2.2016 and also in a very recent judgment of Hon'ble Apex Court in the case of **Ex 6 GNR Laxman Ram Poonia vs. Union of India** (2017) 4 SCC 697. Thus in light of the well settled law on attributability and the fact that RMB has denied attributability or aggravation only on the ground that the disease has started in peace area and not in Field/ High Altitude Area/ Counter Insurgency Operation Area we are of the considered opinion that the disease is to be considered as aggravated by military service. We do not agree that stress and strain of military service is limited to Field/ High Altitude Area/ Counter Insurgency Operation Area only.

8. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar** and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014). Hence we hold the applicant entitled to the benefit of rounding off.

9. As a result of foregoing discussions, the O.A deserves to be allowed and is hereby **allowed**. The impugned orders passed by the respondents rejecting the claim of the applicant for disability pension are set aside. The disability of the Applicant is held aggravated by military service and he is held entitled to disability element from the date of discharge. The disability of the Applicant which was initially assessed as 30% for life will stand rounded off to 50% for life. The Applicant shall be paid arrears of disability pension within four months of

receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid.

10. No order as to costs.

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

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

Dated: March , 2019  
JPT