

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 495 of 2017**

Wednesday, this the 27<sup>th</sup> day of March, 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

No. 7077684-H Hav/Clk (GD), Ram Naresh Singh (Retd.), S/o Late Shri Mathura Singh, R/o Village : Sandwa Somban Siyan, Post : Sahabganj, Tehsil : Lalganj, District Pratapgarh (UP)-230137.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. Addl. Dte. Gen. Personnel Service (AG/PS-4), Adjutant General’s Branch, Integrated of HQ/MoD (Army), DHQ PO, New Delhi-110011.
4. O I C EME Records, Secunderabad (AP) – 500021.
5. PCDA (Pensions), Draupadi Ghat, Allahabad (UP)-211014.

.....**Respondents**

Ld. Counsel for the : **Shri Arun Kumar Sahu**,  
Respondents. Central Govt. Counsel

## ORDER

### “Per Hon’ble Air Marshal B.B.P. 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 or set aside the Govt of India, Ministry of Defence letter dated 02 Aug 1983 (Annexure A-1 & Impugned Order).*
- “(B) To issue order or direction to the respondents to grant disability pension to the applicant from his date of discharge i.e. with effect from 23 Nov 1980 and to pay arrears with suitable rate of interest as deemed fit by this Hon’ble Tribunal.*
- “(C) To issue order or direction to the respondents to grant benefit of rounding off in terms of recommendations of VI CPC wef 01.01.2006.*
- “(D) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Corps of EME in Indian Army on 13.11.1963 and was discharged in the rank of Hav/Clk on 22.11.1980 in Low Medical Category CEE (P) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Army Hospital, Delhi on 13.09.1980 assessed his disability **‘URETERIC DUPLICATION (RT) WITH PRIMARY TRACT INFECTION’** @ 30% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The initial claim of disability was rejected by the Principal

Controller of Defence Accounts (Pensions), Allahabad on 24.02.1981. The claim for grant of disability pension was rejected by the respondents. Against the rejection the applicant had preferred Appeal which was rejected by the respondents vide order dated 01.08.1983. It is in this perspective that the applicant has preferred the present Original Application.

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 contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **'URETERIC DUPLICATION (RT) WITH PRIMARY TRACT INFECTION'** has been regarded as 30% for two years by RMB. However, since the disability was opined by RMB to be neither attributable to nor

aggravated by military service his claim for grant of disability pension was not granted. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, 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)].*  
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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, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**URETERIC DUPLICATION (RT) WITH PRIMARY TRACT INFECTION**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability was first detected in the year 1979 whereas the applicant was enrolled in the year 1963 i.e. after about sixteen years of military service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as

NANA are brief and cryptic in nature and don't justify denial of attributability. Therefore, we are of the opinion that benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years from 22.11.1980.

9. Since the applicant's RMB was valid for two years w.e.f. 22.11.1980, hence, the respondents will now have to conduct a fresh RSMB for deciding his future entitlement to disability element.

10. In view of the above, the **Original Application No. 495 of 2017** deserves to be partly allowed, hence, **partly allowed**. The impugned order dated 02.08.1983, enclosed as Annexure No. A-1 of the Original Application, is set aside. The disability of the applicant '**URETERIC DUPLICATION (RT) WITH PRIMARY TRACT INFECTION**' is to be considered as aggravated by military service. The applicant is held to be entitled to disability pension @30% for two years from the date of discharge of the applicant i.e. 22.11.1980. However, due to law of limitations, he is not entitled to any arrears on his disability element. He is already in receipt of service element since his discharge. The respondents are further

directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 9% per annum till the date of actual payment.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

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

Dated: March, 2019

AKD/-