Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 102 of 2020 with M.A. No. 936 of 2019

Ex Sgt Akhilesh Kumar Verma Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Pankaj Kumar Shukla, learned counsel for the applicant and Shri Anurag Mishra, learned counsel for the respondents. **M.A. No. 936 of 2019** The Original Application has been filed with delay of 01 year, 06 months and 16 days. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application. Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as it is not on day to day basis. Considering that in pensionary matters bar of limitation is not applicable and grounds shown for delay are genuine and sufficient, delay deserves to be condoned. Accordingly, delay is condoned. The O.A. has already been admitted and registered vide order dated 14.01.2020. **O.A. No. 102 of 2020** 1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:- "(A) To quash or set aside the Respondents letter dated 07.11.2017 (Annexure A-1) of OA). (B) To issue order or direction to the respondents to grant disability

pension to the applicant for the disability he had, with effect from 01.12.2017 (Date of discharge : 30.11.2017) with all consequential benefits including rounding off benefit from 40% to 50% in terms of Govt of India letter dated 31.01.2011 and Judgment passed by Hon'ble Apex Court in case of Ram Avtar Vs UOI & Others.

(C) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

3. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Air Force on 18.11.1977 and after having served for more than 20 years, he was discharged from service in low medical category 'A4G3(P)' on 30.11.2017 Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 31.03.2017 which assessed the applicant to be suffering from (I) 'DIABETES MELLITUS TYPE-II (OLD) (E-11) (Z-09.0)' @ 20% for life (II) 'PRIMARY HYPERTENSION (OLD) (1-10.0)(Z-09.0) @ 30% for life neither attributable to nor aggravated by military service (NANA) and composite assessment for both disabilities 40% for life. Disability pension claim preferred by applicant was rejected vide order dated 07.11.2017. Thereafter, applicant preferred first appeal on 17.04.2019 which has not been decided by the respondents. Hence, this O.A. has been filed.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there is 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 and the applicant should be entitled to disability pension. Learned 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 learned counsel for the applicant is that since the aforesaid disease is due to stress and strain related rigors of military service, these should be considered either attributable to or aggravated by military service.

5. On the other hand, learned counsel for the respondents argued that since RMB has declared the applicant's disability as NANA, he is not entitled to disability pension. His further submission is that the competent authority has rightly rejected applicant's disability pension claim on the ground of disability being not related to military service, therefore, O.A. deserves to be dismissed.

6. Heard the learned counsel for the parties and perused the material placed on record. We have also gone through the RMB 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?

7. 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 213. 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).*
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> *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)].*
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> *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).*
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> *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]*
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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)].*
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> *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 in the proceedings i.e. 'constitutional' and disability being originated in peace area with no close time association with stress/strain of service in Fd/HAA/CI Ops. We feel that such a discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency Operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of recruitment must be presumed to have

been caused subsequently, and, unless proved to the contrary to be a consequences of military service. The benefit of doubt, therefore, shall be rightly extended in favour of the applicant. In the instant case, since the applicant was found to be suffering from disability when he had put in more than 17 years of service, it should be deemed to be aggravated by military service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the applicant should be considered as aggravated by military service.

9. In view of the above the applicant is held entitled to 40% disability element for life which shall stand rounded off to 50% disability element for life from the date of his discharge in terms of ***Union of India*** vs. ***Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders dated 07.11.2017 and 17.04.2019 are set aside. The disability of applicant is held aggravated by military service and the benefit of rounding off to 50% is extended from the date of discharge. The respondents are directed to complete the entire exercise within four months from today and pay disability pension to applicant alongwith arrears with effect from his date of discharge.

11. Default will invite interest @ 8% p.a.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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