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

Court No.1 (E. Court)

O.A. No. 169 of 2019

Ex Nb Sub Himmat Singh 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**
	11.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Nishant Verma, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. 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) that by means of an appropriate order the Hon'ble Tribunal may kindly be pleased to quash and set aside the order dated 23.11.2017 rejection the claim for disability pension passed by OIC records The Mech Inf Regt. (b) that by means of an appropriate order or direction in the said nature the respondents may be directed to grant disability pension to the applicant from the date of his discharge i.e. with effect from 06.11.1989. (c) that any other order or direction in the said nature which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be passed favour of the applicant. (d) that the cost of the application may also be directed to be paid. 2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 05.01.1968 and after having served for more than 21 years, he was discharged on compassionate grounds at his own request from service under Army Rule 13 (3) I (I) (b) before completion of terms of engagement in low medical category 'S1H1A1P2E1' (Permanent) on 06.11.1989. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 11.08.1989 which assessed the applicant to be suffering from 'ECG ABNORMALTY (RBBB) OLD V-67' @ 20% for life which was neither attributable to nor aggravated by military service (NANA). Disability

pension claim preferred by applicant was rejected vide order dated 23.04.1992. The same was also communicated to applicant vide letter dated 23.11.2017 informing him that he is not eligible to be granted disability element. Applicant was advised to submit an appeal against the rejection order dated 23.04.1992 within six months which the applicant failed to do so. It is in this perspective that this OA has been filed.

3. 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.

4. On the other hand, learned counsel for the respondents submitted 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.

5. 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? and whether he was invalidated out or discharged on completion of terms of engagements or on his own request?

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 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).

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 RMB has denied attributability/aggravation to the applicant only by endorsing a cryptic sentence in the proceedings i.e. the disability has occurred while applicant was posted in peace station and prior to this posting, he also served in area located in peace station 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 with this disability with effect from 04.04.1988 and was discharged from service with length of service of about 21 years, 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. It is also well settled in law in terms of ***Ex Lt Col RK Rai vs Union of India & Ors***, Civil Appeal No 3101-3102 decided on 16.02.2018 that premature retirees are also eligible to be granted disability element alongwith service element.

8. In view of the above, the applicant is held entitled to 20% disability element for life which shall stand rounded off to 50% disability element for life w.e.f. 01.01.2016.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of applicant is held aggravated by military service and the benefit of rounding off to 50% is extended w.e.f. 01.01.2016. The respondents are directed to complete the entire exercise within four months from today and pay disability element to applicant along with arrears.

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

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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