

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No. 1**

**ORIGINAL APPLICATION No. 50 of 2019**

Tuesday, this the 16<sup>th</sup> day of March, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)**  
**Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 3167125 Ex Sep Chander Pal Singh, S/o Bal Mukund, R/o  
Vill- Mamau, PO- Bohich, Distt- Bulandshahar, (U.P.)

..... Applicant

Ld. Counsel for the : **Shri K.K. Misra**, Advocate.  
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Records, The JAT Regiment, Bareilly (U.P.).
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri Amit Jaiswal**,  
Respondents. Central Govt. Counsel

## ORDER

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (i) To direct the respondents to grant 20% disability pension to the applicant from the date of his discharge from the service, ie 01 May 1992.*
- (ii) To direct the respondents to thereafter, round off this percentage of disability to 50% as per the policy on the subject and pay the arrears of disability pension with interest as applicable.*
- (iii) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*
- (iv) Cost of the application be awarded to the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 12.06.1976 and was discharged on 01.05.1992 in Low Medical Category CEE (Permanent) due to non availability of sheltered appointment. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Jaipur on 28.02.1992 assessed his disability **“COMPOUND MYOPIC ASTIGMATISM BOTH EYES (379)”** @ 20% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The claim of disability was rejected by the respondents vide letter dated 11.11.1992. The

applicant wrote various letters for grant of disability pension but the disability pension was not granted to him. 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 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. **“COMPOUND MYOPIC ASTIGMATISM BOTH EYES (379)”** has been regarded as 20% for two years by RMB. Applicant has been granted service pension. However, since the disability was opined to be neither attributable to nor aggravated by military service his claim for grant of disability pension was rightly rejected. He pleaded for dismissal of the O.A.

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

- (a) Whether the disability of applicant 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)]. [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, we find that the RMB has denied attributability to the applicant only by endorsing that the disability to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability was first detected in the year 1982 whereas the applicant was enrolled in the year 1976 i.e. after about six 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. Therefore, 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, as such the applicant is entitled for the disability pension for two years from the date of his discharge i.e. 01.05.1992.

8. As for 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 01.05.1992.

9. Since the applicant's RMB was valid for two years, hence the respondents will now have to conduct a fresh RSMB for him.

10. In view of the above, the **Original Application No.50 of 2019** deserves to be allowed, hence, **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 held to be entitled to disability element @ 20% for two years from the date of discharge i.e. 01.05.1992. 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 @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
**Member (A)**

Dated: 16 March, 2021  
ukt/-

(Justice Umesh Chandra Srivastava)  
**Member (J)**