

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

**O.A. No. 530 of 2019 with M.A. No. 835 of 2019**

**Ex Sub Harendra Singh Rawat**  
By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>27.01.2021</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri Sudhir Kumar Singh, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present.</p> <p><b><u>M.A. No. 835 of 2019</u></b></p> <p>The Original Application has been filed with delay of 24 years, 05 months and 23 days.</p> <p>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.</p> <p>Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing of application is condoned. Application stands decided accordingly.</p> <p>O.A. has already been admitted and registered vide order dated 15.10.2019.</p> <p><b><u>O.A. No. 530 of 2019</u></b></p> <p>1. The instant Original Application has been filed on behalf of the applicant</p>

under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

*(i) To pass an order or direction commanding the respondents to grant disability pension to the applicant from date of discharge i.e. 30.09.1994.*

*(ii) To pass an order or direction commanding the respondents to grant the benefits disability pension to the applicant from date of discharge i.e. 30.09.1994 @ 18% per annum till the actual realization of aforesaid amount.*

*(iii) To pass an order or direction commanding the respondents to grant the benefits of rounding of the disability pension up to the tune of 50% in terms of Govt. of India letter dated 31.01.2001 and various Judgments of Apex Court as well as This Hon'ble Tribunal.*

*(iv) Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 22.06.1968 and after having completed more than 26 years of service he was discharged from service in low medical category 'BEE' (Permanent) on 30.09.1994. Prior to discharge from service, the applicant was brought before Release Medical Board (RMB) held on 15.06.1994 which assessed the applicant to be suffering from '**NON INSULIN DEPENDANT DIABETES MELITUS 250 (V67)**' @ 20% for two years and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 26.05.1995. First Appeal dated 05.10.1995 against rejection of disability pension claim was also rejected vide order dated 24.02.1997. Hence this O.A.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted

that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. This disease he feels is due to stress and strain related to rigors of military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disability as NANA, therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

5. Heard Ld. 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?

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 applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disease is not connected with service'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in January 1990 i.e. after completion of about 22 years of his 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.

8. In view of the above applicant is held entitled to 20% disability element for two years with effect from his date of discharge w.e.f. his date of discharge.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 26.05.1995 is set aside. The disability of the applicant is to be considered as aggravated by military service. Since applicant's disability was assessed for two years from the date of discharge, he is eligible for disability element for that period only. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified

copy of this order. Further entitlement of disability element of pension shall be subject to outcome of RSMB.

10. No order as to costs.

11. Pending applications, if any, shall be treated as disposed of.

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

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

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