

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 233 of 2020**Tuesday, this the 16<sup>th</sup> day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-642800X, Ex Nb Sub (Hony Sub) Ram Murali Singh, Son of Hazari Singh, R/o Village &amp; Post Office- Phooli, Tehsil-Zamania, District- Ghazipur, State – Uttar Pradesh- 232329.

.....Applicant

Ld. Counsel for : **Shri Vishwash Kumar, Advocate**  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence (Army) , South Block, New Delhi 110010.
2. Chief of the Army Staff, IHQ MOD (Army), Army HQ, South Block, New Delhi.
3. Officer In Charge Records, ASC Records (South), Bangalore – 560007.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh,**  
Respondents Central Govt Counsel

## **ORDER**

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*A. To issue/ pass an order or directions to set aside/quash the letter/order no. JC-642800/Pen/Disb Dated 07.05.2005, letter/ order dated no. JC-642800/AMB/DP-III dated 14.05.2008 and letter/order dated no. JC-642800/Pen/Disb/T-5 dated 25.09.2013 passed by respondents which is attached as Annexure No A-1, A-2 and A-3 respectively to this Original Application.*

*B. To issue/ pass an order or directions to the respondents to grant disability element of disability pension @30% w.e.f. from date of discharge i.e. 01.01.2005 for five years in light of Hon’ble Apex Court Cases i.e. “Sukhvinder Singh Vs Union of India” (Supra).*

*C. To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension @ 30-50% w.e.f. from date of discharge i.e. 01.01.2005 for five years alongwith 12% interest on arrear in light of Hon’ble Apex Court Cases i.e. “Union of India Vs Ram Avtar” (Supra) and vide Government of India Ministry of Defence letter dated 31.01.2001.*

*D. To issue/ pass an order or directions to the respondents to constitute the Re-Survey Medical Board to assess the present medical condition of applicant and if disability persist then grant disability element of disability pension from 02.01.2010.*

*E. To allow this original application with costs.*

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 24.12.1978 and on completion of terms of engagement, he was discharged from service on 01.01.2005. At the time of discharge Release

Medical Board of the applicant was held at Military Hospital, Dehradun and the individual was downgraded to Low Medical Category for disease “**MODERATE DEPRESSIVE EPISODE F-32-1**”, and his disability was assessed 30% for five years and opined it as not attributable but aggravated to military service and cause of disability mentioned as “Due to stress and Strain of service/office work”. Claim for grant of disability pension was rejected vide letter dated 07.05.2005 on the ground of disability being NANA. His appeals for grant of disability pension were also rejected vide letter dated 14.05.2008 and 25.09.2013. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in Indian Army in medically fit condition and, thereafter, he was discharged from service after about 26 years on completion of terms of engagement. At the time of discharge, Release Medical Board was held and the applicant was placed in Low Medical Category for disease “**MODERATE DEPRESSIVE EPISODE F-32-1**”, and disability was assessed @ 30% for five years and opined it as NANA. He pleaded that disability of the applicant be considered as a result of stress and strain of army service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in

similar cases, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 30% for five years, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was found as not attributable but aggravated to military service, therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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)."*

8. Thus, considering all issues we have noted that the only reason given by RMB for denying Attributability is due to stress and strain of service. We are not convinced by this logic that stress & strain of military life is only in Fd/HAA/CI areas and there is no such stress in peace areas. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex

Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease as aggravated by military service.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

10. Since the applicant's RMB was valid for five years w.e.f. 01.05.2005, hence, the respondents will now have to conduct a fresh RSMB for him.

11. In view of the above, the Original Application No. 233 of 2020 deserves to be allowed, hence **allowed**. The impugned orders rejecting the claim for grant of disability pension passed by the respondents are set aside. The disability of the applicant to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant from the date of discharge @ 30% for five years which would stand rounded off to 50% for five years. 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.

12. No order as to costs.

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

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

**Dated : 16 March, 2021**

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