

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 405 of 2017

Thursday, this the 25th day of October 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Lt Col (Retd) SL No 04420X Laxmi Narayan Trivedi S/O Late Shri Ram Shanker Trivedi, R/O H No. 310, Golden Green Park, Bisalpur Bypass Road, Bareilly, UP-243006.

..... Applicant

Ld. Counsel for the : **Shri V.A. Singh**, Advocate.
Applicant

Versus

1. Union of India and others through The Secretary Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army staff, Integrated HQ of MoD (Army), DHQ, PO: New Delhi-110011.
3. Integrated HQ of MoD (Army), Addl Directorate General of Manpower (P&P)/MP6(F), Adjutant General Branch, West Block-III, RK Puram, New Delhi-66.

.....Respondents

Ld. Counsel for the : **Shri A.N. Tripathi**,
Respondents. Central Govt. Standing Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

- (a) *To direct the respondents to consider Disability pension (date of SOS-31/01/2017, thus pension since 01 Feb 2017) with rounding off of disability pension from 30% to 50% in light of the present rounding off policy (2001 policy) as applicable and issue fresh PPO with all previous balance with interest..*
- (b) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (c) *Allow this application with cost.*

2. The facts in nutshell are that the applicant was commissioned in the Indian Army on 26.04.1997 in General Service and was discharged on 31.01.2017 on completion of tenure of engagement. The Release Medical Board (RMB) held at MH, Patiala on 21.09.2016 assessed his disability '**Primary Hypertension (I 10)**' @ 30% for life but opined the disability to be neither attributable to nor aggravated (NANA) by military service. First appeal against rejection of disability pension was rejected by the competent authority vide order dated 24.05.2017. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was fully fit after his initial enrolment and subsequent

commission as an officer. He has picked up this disease due to stress and strain of service. He drew our attention to page 3 (Serial No 5) of the RMB endorsed with the following remarks by the Commanding Officer of the applicant:-

"It being a new Raising Unit his task as QM of the Regiment was very demanding and stressful".

4. Ld. Counsel for the applicant further submitted that service conditions in the new raising unit are very demanding and put similar stress as that of field posting. He vehemently pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is not entitled to disability pension. He further stressed that in the instant case onset of disability was in a peace station and there is no close time association with stress/strain of service as associated with Field/High Altitude/Counter Insurgency Operations. Therefore, disability of the applicant has been conceded as NANA by the RMB. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection order of the first appeal. 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 settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** 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)."

8. 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 Hypertension is primary in nature and the onset of disability is in peace (Patiala) area with no close time association with stress/strain of service in Fd/HAA/CI Ops. We however find that in the same medical board, the Commanding Officer has made following endorsement i.e. **"It being a new Raising Unit his task as QM of the Regiment was very demanding and stressful."** We feel that the Commanding Officer is in a better position to understand the stress and strain of service associated with a new raising unit.

9. we are therefore of the considered opinion that the 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.

10. In view of the above, we are of the view that the applicant is held entitled to 30% disability for life which shall stand rounded off to 50% disability for life in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

11. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 24.05.2017 is set aside. The applicant shall be entitled to disability element @ 30% for life to be rounded off to 50% for life w.e.f. date of discharge i.e. 31.01.2017. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: October, 2018

gsr