

RESERVED
Court No. 1

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

Original Application No. 377 of 2019

Monday, this the 30th day of September, 2019

Hon'ble Mr. Justice Virender Singh, Chairperson
Hon'ble Air Marshal BBP Sinha, Member (A)

Rakesh Chand Mishra
S/o Harsh Narayan Mishra
R/o Village – Amwa,
Newada, Tilhapur
District - Kaushambi

.....Applicant

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

Versus

1. Union of India, through its Secretary,
Ministry of Defence Department,
New Delhi.
2. Chief of the Army Staff,
South Block, New Delhi.
3. Additional Directorate General of Personnel Services/
AG's Branch, IHQ of Ministry of Defense (Army)
PIN – 900256 C/o 56 APO.
4. Chief Records Officer,
Records, PIN – 900473
C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Ms. Amrita Chakraborty,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

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:-

- “(i) *to issue suitable directions to the opposite party no. 3 to quash the impugned order dated 03.04.2019 served upon the applicant on 06.06.2019 by post at his village, passed by opposite party no. 3 (Annexure No. 1).*
- “(ii) *to pass such other and further order as this as this Hon’ble Tribunal may deem fit and proper.*
- “(iii) *award the costs to the applicant.*”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 13.08.1987 in medically fit condition and discharged from service on completion of the terms of engagement on 31.10.2015 in low medical category after serving more than 28 years of service. The Release Medical Board held before retirement, considered the disability for ID No. (i) ‘**PRIMARY HYPERTENSION**’ as neither attributable to nor aggravated by military service and assessed it 30% for life and ID No. (ii) ‘**DYSLIPIDEMIA**’ as neither attributable to nor aggravated by military service and assessed it 1-5% for life and composite assessment was given 30% for life. The claim of the applicant for grant of disability pension was rejected by the competent authority vide order dated 17.09.2017. Thereafter, the applicant filed his first appeal which was also rejected by the competent authority vide order

dated 03.04.2019. Aggrieved by the denial of disability pension, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has been retired from service in Low Medical Category with disability **'PRIMARY HYPERTENSION'** @ 30% for life. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service. He prayed for grant of pension @ 30% for life for the applicant's disease **'PRIMARY HYPERTENSION'** and requested for the benefit of rounding off to 50% for life.

4. Though, in this case counter affidavit has not been filed by the respondents but while arguing the case, the respondents submitted certified copies of relevant medical documents. The learned counsel for the respondents has not disputed that the applicant suffered disability to the extent of 30% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that ID No. (i) **'PRIMARY HYPERTENSION'**, assessed @ 30% for life is neither attributable to nor aggravated by military and ID No. (ii) **'DYSLIPIDEMIA'**, assessed @ 1-5% for life is also neither attributable to nor aggravated by military service. Therefore, in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for grant of disability pension has correctly been rejected.

5. In this case though the counter affidavit has not been filed by the respondents, however, with the consent of learned counsel for both the parties, we proceed to decide the case.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB. 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*** (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 for disease 'PRIMARY HYPERTENSION' is that it first started in a peace area and not in a Fd/HAA/CI area. 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 these circumstances 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 of the applicant i.e. 'PRIMARY HYPERTENSION' as aggravated by military service. However, we agree with the opinion of the RMB that second disease i.e. 'DISLIPIDEMIA', 1-5% is NANA because it is not connected with 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.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The disability 'PRIMARY HYPERTENSION' @ 30% for life is to be considered as Aggravated by military service. The respondents are directed to grant disability element to the applicant @ 30% for life which would stand rounded off to 50% for life from the date of discharge. However due to limitations as laid down by the Hon'ble Supreme Court in the case of *Shiv Dass vs. Union of India*, reported in 2007 (3) SLR 445, the arrears of disability element will be restricted to three years prior to filing of the Original Application. The date of filing of Original Application is 12.07.2019. The respondents are further 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: September, 2019
SB

(Justice Virender Singh)
Chairperson