

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 115 of 2019****Monday, this the 30<sup>th</sup> day of September, 2019****“Hon’ble Mr. Justice Virender Singh, Chairperson**  
**“Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 13975780N, Ex Nk Ramesh Chandra, S/o Shri Ram Pyare Verma,  
R/o House No. 462, Sector-10-C, R/o Vill- Vrindavan Colony, P.O.-  
Utretia, P.S.-PGI, Tehsil- Sadar, District- Lucknow, State- U.P., India.

..... Applicant

Counsel for the : **Shri Dharam Raj Singh, Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of the Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Addl. Dte Gen of Personnel Service, Adjutant General’s Branch, Integrated Head Quarter of Ministry of Defence (Army), DHQ PO, New Delhi- 110011.
4. The Officer- in-Charge, Army Medical Corps Records, Lucknow- 226002.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Dr. S.N. Pandey, Advocate**  
Respondents. Addl. Central Govt. Standing Counsel

**ORDER**

**Per Hon'ble Air Marshal BBP Sinha, Member (A)**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension with the following prayers:

A. To issue/pass an order to set/aside –quash the letter no.C/13975780N/DP(I) dated 25.05.2010 and letter no. B/40502/181/11/AG/PS-4 (Imp-II) Dated 05.09.2011 passed by the respondents, which is attached as Annexure No.A-1 and A-2 to this Original Application.

B. To issue/ pass an order or directions to the respondents for grant of disability element of disability pension and subsequently benefit of rounding of the disability element of disability pension @40% to @50% alongwith 12% interest of the arrear from date of discharge i.e. 01.02.2010.

C. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

D. To allow this original application with costs.

2. At the very outset it may be observed that the petition for grant of disability pension was preferred by the applicant with delay of 06 years, 10 months and 29 days, which has been condoned vide order dated 15.02.2019.

3. The brief facts of the case as borne out from the record are that the applicant was enrolled in Indian Army on 01.02.1988 and discharged from service w.e.f. 01.02.2010 under Army Rule 13(3) item (iii)(i) after completion of 22 years of service in low medical category. Release Medical Board (RMB) held at the time of discharge of the applicant found him suffering with disability "**BICUSPID AORTIC VALVE DISEASE (MILD AORTIC REGURGITATION)**", which was assessed at 40% for life. However, the disability was considered

neither attributable to nor aggravated (NANA) by military service. The assessment of disability pension of the applicant was adjudicated by competent authority but the same was rejected vide letter dated 25.05.2010. First appeal preferred by the applicant was also rejected vide letter dated 05.09.2011. It is in this perspective that the applicant has preferred the present O.A.

4. The submission of learned counsel for the applicant is that the applicant was fully fit at the time of enrolment. He has picked up the disease due to stress and strain of service. The submission of the learned counsel for the applicant is that since the applicant was in a fit medical condition at the time his enrolment/engagement, as such, his disabilities should be considered as attributable to and aggravated by military service and disability pension should be granted to the applicant in consonance with the provisions of Regulation 423 of the Pension Regulations for the Army.

5. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the Release Medical Board (RMB) has opined that the diseases suffered by the applicant is neither attributable to nor aggravated by military service, as such, the applicant has rightly been denied disability pension. He submitted that the applicant is in receipt of service element pension for his 22 years of service. He pleaded the O.A. to be dismissed.

6. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

7. We have noted that the applicant was enrolled in the Army on 01.02.1988 and as per RMB his disease "**BICUSPID AORTIC VALVE**

**DISEASE (MILD AORTIC REGURGITATION)”** was detected within 2 years & 10 months of his enrolment i.e. on 13.11.1990. The RMB has denied attributability to military service on the ground that it is a congenital defect i.e. a defect in the heart which has developed before birth, in the womb. Medical literature available on this subject is very clear that this disease is a congenital disease i.e. a normal heart has an ‘AORTIC VALVE’ which is ‘TRICUSPID’ i.e. has three parts or has three leaflets, whereas the ‘AORTIC VALVE’ of a person suffering with this congenital disease will have two parts or two leaflets that is why it is called ‘BICUSPID AORTIC VALVE’ and is a congenital defect.

8. Thus since this defect is well known in medical literature and it develops before birth in the womb, we by no stretch of imagination can presume it to be due to stress & strain of military service. We are satisfied with the reasons given in RMB as to why this disease could not be detected at the time of enrolment. The Hon’ble Apex Court judgment in the case of *Dharamvir Singh vs. Union of India & others* (2013) 7 SCC 316 is of no help to the applicant in this case.

9. In the circumstances as mentioned above, the applicant has not been able to prove his case, hence liable to be dismissed and is **dismissed** being devoid of merit.

10. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice Virender Singh)**  
**Chairperson**

Dated : September ,2019  
JPT/SB