

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 21 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. 13623157K Ex LNK Jitendra Singh,  
Resident of House No. 35/4,  
Nagla Bhawani Singh,  
Bindu Katra,  
Agra- 282000, U.P.

..... Applicant

Counsel for the : **Shri Veer Raghav Chaubey,**  
Applicant **Advocate**

Versus

1. Union of India through Secretary,  
Ministry of Defence, Government of India,  
South Block, New Delhi 110011.
2. The Records,  
Parachute Regiment,  
PIN 900493, C/o 56 APO.
3. Office of the PCDAP,  
Draupadi Ghat,  
Allahabad.
4. Military Hospital,  
Jodhpur, PIN 900066,  
C/o 56 APO.
5. Deputy Commandant,  
Parachute Regiment Training Centre,  
PIN 900493, C/o 56 APO.

.....Respondents

Counsel for the : **Dr. Chet Narain Singh, 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 the grant of disability pension with the following prayers:

(i) This Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 31.07.2015 and 30.07.2017 passed by the opposite party no.2 and 5 contained in Annexure No.1 and 2.

(ii) This Hon'ble Tribunal may grant disability pension w.e.f. 31.07.2015.

(iii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

2. This O.A. was preferred by the applicant with delay of 07 years, 02 months and 23 days, which has been condoned vide order dated 11.01.2019.

3. The brief facts of the case as borne out from the record are that applicant was enrolled the Army on 14.02.1999 and was discharged from the service w.e.f. 31.07.2015 after rendering more than 16 years service in low medical category. The Release Medical Board (RMB), which diagnosed him to be suffering from **"OTHER NON ORGANIC PSYCHOSIS"**, assessing disability @ 40% for life as neither attributable to nor aggravated (NANA) by military service. Applicant submitted an application for grant of disability pension, which was rejected vide letter dated 09.06.2017. Thereafter the applicant filed an application under RTI Act to Appellate Authority on 30.07.2017, which was replied by it vide letter dated 19.07.2017 intimating him that RTI Act is not

a medium to settle grievances and the application was accordingly disposed of. Now in this perspective the applicant has preferred the present O.A.

4. The respondents have filed counter affidavit denying the claim of the applicant on the ground that the disability in question is neither attributable to nor aggravated by military service. It has also been pleaded that the claim of the applicant for disability pension was adjudicated and rejected by the concerned authority on the findings of RMB and the applicant was intimated of the decision.

5. The submission of learned counsel for the applicant is that the applicant was fully fit at the time of enrolment. He suffered from the disability in question due to stress and strain of Army service. He drew our attention to page 5 of the RMB (Annexure-CA-III) endorsing with the following remarks:-

“1. Did the disability exist before entering service?  
(Y/N/Could be)-N

4 (a). was the disability attributable to the individual's own negligence or misconduct. If so, in what way ? –No.”

Further submission of the learned counsel for the applicant is that since the applicant was in a fit medical condition at the time of his enrolment, as such, his disability 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.

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

7. We have considered the submissions of the learned counsel for the parties and perused the material placed on record. In this case the only question which we need to answer is as to whether the disability of the applicant is attributable to or aggravated by military service?

8. The law on the point of attributability of a disability is no more *Res Integra*. In the case of **Dharamvir Singh vs. Union of India & Ors**, (2013) 7 SCC 316, while considering the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In **Dharamvir Singh's** (supra) case, their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service.

9. In this case, we have noted that RMB has denied attributability on the ground that 'onset and cause of disease is not related to military service'. However we fail to understand this logic in light of the fact that the applicant was fully fit till about 13<sup>th</sup> year of his service when he first picked up this mental disorder called '**OTHER NON ORGANIC PSYCHOSIS**'. Mental disorder besides other factors are known to get aggravated by stress & strain. Thus in light of the law settled on this matter by Hon'ble Supreme Court, we would like to extend the benefit of doubt to the applicant. Hence, we are of the opinion that his disability is to be considered as 'Aggravated by military service'.

10. On the issue of benefit of rounding off of disability pension, we are of the opinion that the instant case falls within the decision of Hon'ble Apex Court in the case of ***Union of India vs. Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 decided on 10th December, 2014). Hence, the applicant is entitled to the benefit of rounding off.

11. Accordingly, O.A. No. 21 of 2019 is **allowed**. The impugned orders passed by the respondents are set aside. The disability of applicant for '**OTHER NON ORGANIC PSYCHOSIS**', @ 40% for life is considered to be aggravated by military service. The respondents are directed to grant disability element to the applicant @ 40% for life rounded off to 50% for life w.e.f. the date of discharge i.e. 31.07.2015. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order, failing which the

applicant shall also be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to costs.

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

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

Dated : September ,2019  
JPT/SB