

**RESERVED**  
**COURT NO.1**

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

**ORIGINAL APPLICATION NO. 462 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)**

Ex Sgt Ram Chandra Yadav, Wpn Fit,  
S/o Late Satya Narayan Ydadv,  
R/o Village Tilai Mahmampur  
Post Gheenpur (Mauaima)  
District Allahabad (U.P.) 212507.

.....Applicant

Ld. Counsel for :  
the Applicant

**Shri Rahul Pandey,**  
**Advocate**

Versus

1. The Union of India through Secretary,  
Ministry of Defence, Government of India,  
New Delhi.
2. Chief of the Air Staff,  
Air Headquarters,  
Vayu Bhawan, Rafi Marg,  
New Delhi.
3. DDPA III, Air Headquarter,  
Vayu Bhawan,  
New Delhi 110106.
4. Director of Air Veterans (AV-III Appeals),  
Air Head Quarters,  
Air Force Record Office Building,  
Subroto Park,  
New Delhi 110010.

.....Respondents

Ld. Counsel for the :  
Respondents

**Shri Shyam Singh,**  
**Ld. Counsel for the Respondents.**

**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:-

- “(a) To quash the impugned orders dated 31.10.2011, Rejection of Disability pension claim of the applicant, passed by Air Force Record Office, PIN 938406, Subroto Park, New Delhi 110010 vide letter No.RO/2703/767122/03/12/P&W (DP/RMB), Order dated 17.8.2018 passed by Air Head Quarter, Director of Air Veterans, AFRO building, Subroto Park, New Delhi, 110010 on first Appeal against Rejection of Disability pension claim of the applicant passed by first appellate committee vide letter No. Air HQ/99798/767122/TBS/Appeal/AV-III (Appeals) and order dated 4.4.2019 which was received by applicant vide letter No. Air HQ/99798/5/TBSI/767122/Appeal/AV-III by which the respondent concerned have rejected the Disability pension claim, First Appeal and Second Appeal of the applicant respectively. (Annexures No.A-1, A02 & A-3 to compilation no.1).*
- (b) To direct the respondent concerned to consider the claim of the applicant for grant of disability pension in accordance with law.*
- (c) To direct the respondent concerned to pay the dues of the disability pension which is applicable to the applicant in accordance with law.*
- (d) To issue any suitable order or direction which this Hon’ble Tribunal may deem fit and proper under the present facts and circumstances of the case.*
- (e) To award the cost of the proceeding to the applicant.”*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of more than 07 years. Since payment of pension involves recurring cause of action, as such, the delay was condoned and the petition was admitted vide order dated 13.09.2019.

3. In brief, the facts necessary for the purpose of this O.A. are that the applicant was enrolled in Indian Air Force on 13.03.1992 and was discharged from service on 31.03.2012. His Release Medical Board (RMB)

opined his disability “**PRIMARY HYPERTENSION (OLD)**” @ 30% for life neither attributable to nor aggravated by military service (NANA). Accordingly his claim for disability pension was rejected. Applicant preferred first appeal which was rejected in 2018. His second appeal has also been rejected in 2019. Hence this O.A.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and has been discharged from service in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension in accordance with the law settled by the Hon’ble Supreme Court vide its judgment in the case of *Dharamvir Singh vs UOI & Ors*, reported in (2013) 7 SCC 316. He pleaded for grant of disability pension to the applicant.

5. The respondents have not filed counter affidavit but they have submitted certified copies of relevant medical records. Ld. Counsel for the respondents argued that while it is not disputed that the medical authority considered the disease “**PRIMARY HYPERTENSION (OLD)**” as NANA and assessed the disability at 30% for life. The Medical Authority considered it as NANA because there is no close time association with stress and strain of field/HAA/CI (Ops) service and the disease has started in peace area. They have concluded that in terms of Para 173 of Pension Regulations, the applicant’s claim has correctly been rejected and prayed for O.A. to be dismissed.

6. In view of the above, though counter affidavit has not been filed, with the consent of both the parties, we proceed to decide this case.

7. We have heard the parties and perused the RMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service.

8. On careful scrutiny of the RMB, we find that the RMB has denied attributability for the disease “**PRIMARY HYPERTENSION (OLD)**” on the ground that it has started in peace and has no close time association with Fd/HAA/CI (Ops) areas. We do not agree with this logic of RMB that stress and strain of military service is only relevant in Fd/HAA/CI (Ops) areas. We believe that the nature of military duties is such that they can generate stress and strain in peace areas also. Hence in line with the settled law on attributability and aggravation vide Hon’ble Supreme Court’s judgment of *Dharamvir Singh* (supra) we give benefit of doubt to the applicant and declare his disability as aggravated by military service. Additionally, in line with the settled law by Hon’ble Supreme Court vide its judgment in the case of *UOI & Ors vs Ram Avtar*, (Civil Appeal No 418 of 2012 decided on 10.12.2014) the applicant is also entitled for the benefit of rounding off of disability pension after his discharge.

9. However it is a well settled law that the claim for pension is based on continuing wrong and the relief can be granted if such continuing wrong creates a continuing source of injury. In the case of *Shiv Dass vs. Union of India*, reported in 2007 (3) SLR 445 the law settled by the Hon’ble Apex Court is that if a petition for pension (disability pension in this case) is filed

beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

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

11. Accordingly the O.A. is **allowed**. The disability of the applicant i.e. **“PRIMARY HYPERTENSION (OLD)”** is to be considered as aggravated by military service. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability element to the applicant @ 30% for Life which would stand rounded off to 50% for Life from three years prior to the filing of the present Original Application. The date of filing of O.A. is 13.05.2019. 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.

No order as to cost.

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

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

Dated: September, 2019  
PKG/GSR