

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

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

**ORIGINAL APPLICATION No. 133 of 2019**

Monday, this the 30<sup>th</sup> day of September, 2019

**“Hon’ble Mr. Justice Virender Singh, Chairperson**  
**Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

Col. Shiv Prasad Maurya (Retd.), S/o Late Sri Ram Lakhan Maurya, R/o 5-C/4, Vrindavan Yojna, Lucknow.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. AG PS M.P.-6B (Imp-II), West Block, R.K. Puram, New Delhi-110011.
4. Principal Controller of Defence Account (Pension), PCDA (P), Draupadi Ghat, Allahabad-211014.

.....**Respondents**

Ld. Counsel for the : **Shri Asheesh Agnihotri**,  
Respondents. Central Govt. Counsel

**ORDER**

**“Per Hon’ble Air Marshal B.B.P. 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) *Issue/Pass an order or direction of appropriate nature to quash/set aside respondent’s impugned order ‘not attributable to/aggravated by service being constitutional’ in Part-V of IMB/RMB proceedings to be read s (Annexure No. A-1) leading to denial/rejection of applicant’s entitled 20% disability element of pension for life rounded off to 50% and the same be treated as attributable to/aggravated by service and the disability element be granted w.e.f. 01/07/2009.*
- (b) *Issue/Pass an order or direction of appropriate nature to quash/set aside respondent’s letter dated 22/07/2009 rejecting applicant’s claim for 20% disability element (Annexure No.A-2).*
- (c) *Issue/Pass an order or direction of appropriate nature to quash/set aside respondent’s letter dated 06/05/2010 rejecting applicant’s 1<sup>st</sup> appeal claim for 20% disability element of pension (Annexure No. A-3).*
- (d) *Issue/Pass an order or direction of appropriate nature to quash/set aside respondent’s letter dated 09/08/2012 rejecting applicant’s 2<sup>nd</sup> appeal claim for 20% disability element of pension (Annexure No. A-4).*
- (e) *Issue/Pass an order or direction of appropriate nature to the respondents to grant 20% disability element of pension duly rounded off to 50% in light of decisions*

*of Hon'ble Supreme Court in Dharamvir Singh vs. Union of India, (2013) 7 SCC, and Civil Appeal No. 418 of 2012 Titled UOI & Others v Ram Avtar and also in terms of Mod letter No.1(2)/97/D(PEN-C) 31 Jan 2001.*

- (f) *Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (g) *Allow this application with costs.*

2. Briefly stated facts of the case are that the applicant was initially enrolled in the Army (EME) on 22.09.1972 and rendered seven years of service. Thereafter, the applicant was commissioned in the Indian Army on 18.06.1983 and was retired from service on 30.06.2009 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital on 17.01.2009 assessed his disability '**CAD (DVD)**' @ 20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service (Reason Constitutional disease. No service related causative factor). The applicant approached the respondents for grant of disability element of pension, but the same was rejected by the respondents vide order dated 22.07.2009 (Annexure No. A-2 of the Original Application). The applicant's first and second appeals were also rejected vide order dated 06.05.2010 and 09.08.2012 (Annexure Nos. A-3 and A-4 of the

Original Application). It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of Commission in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @20% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records. The only question which we need to answer is whether the disability of the applicant is attributable to or aggravated by Military Service?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, 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)."*

7. 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 the disability “**CAD (DVD)**” is neither attributable to nor aggravated (NANA) by service as the disease is constitutional in nature and no service related causative factor. This reasoning of RMB is not convincing and doesn't reflect the complete truth on this matter. The applicant was commissioned in Indian Army on 18.06.1983 and the disability has started after more than 25 years of Army service i.e. on 19.04.2008. 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. Additionally the applicant will be entitled to the benefit of rounding off from 20% for life to 50% for life in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram***

**Avtar & ors** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014).

8. It is also observed that claim for pension is based on continuing wrong and 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, Hon'ble Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

9. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

10. In view of the above, the Original Application No. 133 of 2019 deserves to be partly allowed, hence **partly allowed**. The impugned orders dated 22.07.2009, 06.05.2010 and 08.08.2012, enclosed at Annexure Nos.A-2, A-3, and A-4 of the Original

Application, are set aside. The disability '**CAD (DVD)**' @20% for life of the applicant is to be considered as aggravated by military service. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 12.12.2018. 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 till actual payment.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

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

Dated: September, 2019  
AKD/-