

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 340 of 2019**Monday, this the 22<sup>nd</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 215854-S Ex HFO Sureshwari Prasad Singh  
S/o Muneshwari Prasad Singh  
R/o Village & Post Office – Gunri,  
District – Bhojpur (Bihar) Pin-802313  
Presently residing at House No. 204, Lukarganj,  
Near Police Point, Allahabad PIN-211017

..... Applicant

Ld. Counsel for the Applicant: **Shri Sudhir Kumar Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Air Headquarter, New Delhi – 110011.
3. Air Officer Commanding, Air Force Record Office, Subroto Park, new Delhi – 110010.
4. Directorate of Air Veterans, Air Headquarter, Subroto Park, New Delhi – 110010.
5. Jt. CDA, AF, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey**,  
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(I) To pass an order or direction for quashing of order dated 15.07.1994, after summoning the same from the respondents,

by which the applicant was illegally denied the disability pension.

(II) To pass an order or direction commanding the respondents to grant the benefits disability pension to the applicant from the date of discharge i.e. 31.01.1994 along with interest @ 18% per annum till the actual realization of aforesaid amount.

(III) To pass an order or direction commanding the respondent to grant the benefits of rounding of the disability pension, in term of Govt. of India letter dated 31.01.2001 and various Judgment of Apex Court as well as this Hon'ble Tribunal.

(IV) Pass any order which the Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

(V) Allow the Original Application with cost.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 13.12.1957 and was discharged from service on 31.12.1994 in low medical category on attaining the age of superannuation. The Release Medical Board (RMB) assessed his disability “**ISCHEMIC HEART DISEASE**” @ 30% for two years and opined the disability as neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected by the respondents vide order dated 15.07.1994. The applicant submitted an appeal against the rejection order which has been rejected by the competent authority vide order dated 25.05.2000. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He placed reliance on various judgments of the Hon'ble Apex Court as well as this Hon'ble Tribunal and pleaded that applicant be granted disability pension @ 30% from the date of discharge duly rounded off as per Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as 30% for two years by RMB as neither attributable to nor aggravated by military service and it is constitutional and metabolic in nature. Hence, as per Rule 153 of Pension Regulations for the Indian Air Force 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir***

**Singh Vs. Union of India and Ors**, (2013) 7 SCC 213. 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/aggravation, we find that the RMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'constitutional and metabolic in nature'. We do not find this cryptic remark adequate to deny

attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started on completion of 32 years of service, therefore, we are of the considered opinion that the benefit of doubt should be given to applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 30% disability element for two years from his date of discharge from service.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 30% for two years from the date of discharge from service. The respondents are directed to grant disability element @ 30% for two years from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
**Member (A)** **Member (J)**

Dated: February, 2021  
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