

Form No. 4  
{See rule 11(1)}  
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

5. O.A. No 111 of 2015

Major Suhas Sitaram Thakar (Retd.)  
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>06.06.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Satendra Kumar, Ld. Counsel for the applicant and Shri A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is <b>allowed</b>.</p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p><i>Sd/-</i> (Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/Mhi/-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI****ORIGINAL APPLICATION No. 111 of 2015**

Monday, this the 6<sup>th</sup> day of June, 2022

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

Major Suhas Sitaram Thakar (Retd.)  
IC 24600F

R/at Sudeep, 27 Yeshwant Nagar,  
Range Hill Road, Rane Circle,  
Pune – 411 007

.. Applicant

By Legal Practitioner – **Mr. Satendra Kumar** for the Applicant

**Versus**

1. Union of India  
(Through Secretary, Ministry of Defence)  
Aayakar Bhavan, New Marine Lines,  
Mumbai.
2. Chief of Army Staff  
Integrated Head Quarters,  
D.H.Q.PO, New Delhi-110011.
3. Addl. Dte. Gen of Manpower,  
(Policy & Planning)/ MP 5  
Adjutant General's Branch,  
Integrated HQ of MxD (Army)  
Wing No.3, Ground Floor,  
West Block-III, R. K. Puram,  
New Delhi-110066.

.. Respondents

By Legal Practitioner – **Mr. A. J. Mishra**, Sr. Panel Counsel for the Respondents

**ORDER**

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

*"(a) That this Hon'ble Tribunal after going through the records and proceeding and examining the legality thereof be pleased to quash and set aside order dated 7<sup>th</sup> October, 2015.*

*(b) That this Hon'ble Tribunal be pleased to declare that the Applicant is entitled to disability pension 20% and rounded off 50% as per the Govt. Policy from the date of release along with service element as per the rules and the regulations.*

*(c) That this Hon'ble Tribunal be pleased to direct the Respondent to carry out fresh medical board and assessed medical disability within period of two months at Pune.*

(d) *That this Hon'ble Tribunal be pleased to grant such other reliefs in the facts and circumstances of this case deemed fit and proper"*

2. Briefly stated, applicant was enrolled in Indian Army on 20.12.1970 and was discharged on 17.08.1986 in Low Medical Category P2 (Permanent). At the time of retirement from service, the Release Medical Board (RMB) held at MH Allahabad assessed his disability 'I.H.D. (411) V 67' @ 20% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant submitted an application dated 25.09.2015 for grant of disability pension but the disability pension has not been granted. The initial claim of disability was rejected by the respondents vide order dated 07.10.2015. 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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted 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. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, 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 i.e. 'I.H.D. (411) V 67' has been regarded as 20%

for two years by RMB. However, since the disability was opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was not granted as per Regulations 48 and 53 of Pension Regulations for the Army, 1961 (Part-I). He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?
- (c) Whether the applicant is entitled to disability pension being a case of discharge on his own request?

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 'I.H.D. (411) V 67' is neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability has been firstly detected in the year May 1981 whereas the applicant was commissioned in the year 1970 i.e. after about eleven years of military service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by **Dharamvir Singh vs Union of India & Ors** (supra) and the disability of the applicant should be

considered as aggravated by military service. As such the applicant is entitled for the disability pension for two years from the next date of his retirement.

8. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that "In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity."

In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on his own request on compassionate grounds.

9. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. two years since he retired before 01.01.1996.

10. Since the applicant's RMB was valid for two years, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.



11. In view of the above, the **Original Application** deserves to be allowed, hence, **allowed**. The impugned order passed by the respondent is set aside. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability pension @20% for two years from the next date of retirement of the applicant. The respondents are directed to grant disability pension @ 20% for two years to the applicant from the next date of his retirement. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

Sd/-

(Vice Admiral Abhay Raghunáth Karve)  
Member (A)

Sd/-

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 6<sup>th</sup> June, 2022

SB/AMK