

**(2020) 02 AFT CK 0057**

**In the Armed Forces Tribunal**

**Case No : Original Application No. 602 Of 2017**

Rajesh Kawatra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 24-02-2020

**Acts Referred:**

**Citation :** (2020) 02 AFT CK 0057

**Hon'ble Judges :** Sunita Gupta, J;B.B.P. Sinha, Member (A)

**Bench :** Division Bench

**Advocate :** Kirtika Chhatwal, S. Singh, V.S. Tomar

**Final Decision :** Disposed Of

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## **Judgement**

1. Having been found medically and physically fit, the applicant was commissioned in the Indian Navy on 01.07.1982 and was superannuated from service on 31.08.2014. Before proceeding on discharge. the applicant was subjected to Release Medical Board (RMB). The Release Medical Board

found that the applicant was suffering from disability namely ""PRIMARY HYPERTENSION AND DIABETES MELLITUS TYPES-II"" and

assessed at a composite 60% for life treating it as neither attributable to nor aggravated by service.

2. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court

including Dharamvir Singh Vs Union of India and Ors. (2013) 7 SCC 31.6 Union of India and Ors Vs Rajvir Singh (2015) 12 SCC 26 4and Union of

India and Ors Vs. Angad Singh Titaria, (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant rules.

3. Per contra, learned counsel for the respondents contended that the applicant

is not entitled to the relief claimed since the Release Medical Board, being an Expert Body, found the disability ""Neither Attributable to Nor Aggravated by Service"".

4. Having heard learned counsel on both sides, we are of the view that the case on hand is squarely covered by the decisions referred to herein above.

In Dharannvir Singh (supra) the Honble Supreme Court held that any disability sustained during the course of Military Service will be attributed to

service conditions unless the disability was such that the disease could not have been detected on medical examination before a person is selected for

Defence Service and furthermore before arriving at a conclusion the Release Medical Board should have assigned reasons, in writing, that the

disability was not due to Military Service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering

from any disease and that the disability in question was detected/sustained only during the course of his Military Service.

5. The matter for implementation of orders of the Hon'ble Supreme Court in the matter of Dharamvir Singh (supra) in respect of Armed Forces

Personnel in NANA cases was taken up with the Department of Expenditure, Ministry of Finance for consideration. Accordingly, Ministry of

Defence by their letter dated 29th June, 2017 sent to the Chief of Staff of Army, Navy and Air Force for implementation of the orders of Hon'ble

Supreme Court, has laid down the following essential parameters for allowing disability pension:

1. The question whether a disability is attributable or aggravated by military service is to be determined under ""Entitlement Rules for Casualty

Pensionary Awards 1982.

II. 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.

III. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has laid to an

individual's discharge or death will be deemed to have arisen in the service.

IV. 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.

6. We have noted that the reason for denying Primary Hypertension is that the origin of the disease was in peace area and not in the Field/HAA/CI

area. However, we are of the opinion that stress and strain of military service is not confined to Field/HAA/CI area only. It is also present in peace

area, therefore, we would like to give benefit of doubt to the applicant and in the light of the law settled by the Hon'ble Supreme Court in the case of

Dharamvir Singh (supra), disease Hypertension is to be considered as II Ird disability to be aggravated by military service and is to be rounded off to

50% for life.

7. As far as the second disability is concerned, specialist medical opinion attached with medical record indicates that the mother and elder sister of the

applicant are also suffering from diabetes and hence there is an element of genetic loading in this disability. In view of this fact, we are of the opinion

that benefit of doubt for second disability cannot be extended in favour of the applicant. Therefore, we are in agreement with the opinion of RMB that

the second disability. i.e., DIABETES MELLITUS TYPES-II is neither attributable to nor aggravated by military service.

8. In the light of the above, we partly allow the OA The first disability of the applicant 'PRIMARY HYPERTENSION for life is considered to be

aggravated by military service and is to be rounded off to 50% for life from the date of his discharge. i.e., 31.08.2014 and the applicant is entitled for

disability element for this disability. The disability @ 30% is to be rounded upto 50% in the light of the judgment of the Hon'ble Supreme Court in

Union of India and Ors Vs Ram Avtar decided on 10th December. 2014

9. The respondents are directed implement the order within a period of 4 months from the date of receipt of a copy of this order. failing which the

arrears shall carry interest at the rate of 6 per cent per annum.

10. The O.A. stands disposed of in the above terms with no order as to costs.