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**(20) 06 AFT CK 0016**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 746 Of 2018

Jagdish Singh Ahlawat

APPELLANT

Vs

Union Of India And  
Others

RESPONDENT

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**Date of Decision:** June 19, 0020

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

**Bench:** Division Bench

**Advocate:** V.S. Kadian, Ashok Chaitanya

**Final Decision:** Dismissed

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### **Judgement**

1. The applicant, Col. Jagdish Singh Ahlawat (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No 13417/IC-42534M/INT/MP-6(F)/43/2016/AG/PS-4(Imp-H) dated 22.06.2016. And/or

(b) Direct respondents to treat the disability i.e. MASS HEAD OF PANCREAS (OPTD) of the applicant as attributable to or aggravated by military

service and grant him disability element of pension by taking into account both the disabilities compositely @50% and by broad banding it to 75% in

terms of Gol, MoD letter No 1(2)/07/0(Pen-C) dated 31.01.2001. and/or

(c) Direct respondents to pay the due arrears after adjustment of both disabilities with interest @12% p.a. from the date of retirement with all the

consequential benefits.

(d) Any other relief which the Honible Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was commissioned In the Indian Army on 15.12.1984

and retired from service on superannuation w.e.f. 31.10.2013 in low medical category after rendering more than 28 years of service. The Release

Medical Board (RMB) held at Command Hospital (Northern Command) on 16.04.2013 assessed his disabilities (i) 'MASS HEAD OF PANCREAS

(OPTD)' @ 30% for life, (ii) 'PRIMARY HYPERTENSION' @ 30% for life. The composite assessment for both the disabilities was @ 50% for life

and net assessment qualifying for disability pension was 30% for life. However, the RMB opined that second ID of the applicant was

'Aggravated' by service whereas first ID was neither attributable to nor aggravated by military service (NANA). The applicant is already in receipt of

30% disability element for his second disability. Now he has filed this Original Application for grant of disability element of his first ID i.e. 'MASS

HEAD OF PANCREAS (OPTD)'.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in the Indian Army and any disability

not recorded at the time of commission should be presumed to have been caused subsequently. The action of the respondents in denying disability

element for the first ID to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of

India and others, (2013) 7 SCC 316 and submitted that for the purpose of determining attributability of the diseases to military service, what is material

is whether the disabilities were detected during the initial precommissioning medical tests and if no disability was detected at that time, then it is to be

presumed that the disabilities arose while in service, therefore, the first disability i.e. 'MASS HEAD OF PANCREAS (OPTD)' of the applicant is to

be considered as aggravated by service and he is entitled to get disability element @ 500/0 for life and both disabilities to be broad banded to 75% for

life.

4. On the other hand filed the Counter Affidav in receipt of 30% disability (ii) 'PRIMARY HYPER' his first disability i.e. assessed @ 30% for life element

for his first disability (OPTD)' has rightly been that the instant Original, same is to be dismissed.5. Having heard the learned counsel for both the parties and

perused the records, the only question that needs to be answered is, whether the first disability i.e. 'MASS HEAD OF PANCREAS (OPTD)' of the

applicant is attributable to or aggravated by military service?

6. We have noted that the applicant is already in receipt of 30% disability element for his second ID i.e. 'PRIMARY HYPERTENSION' being

Aggravated to service and his first disability i.e. 'MASS HEAD PANCREAS (OPTD)' is NANA.

7. The opinion of the same RMB with regard to second disease has been accepted selectively by the applicant and for the first disease i.e. 'MASS

HEAD OF PANCREAS (OPTD)' he is challenging the RMB. With regard to the said disease the medical literature states that this disease can be

caused due to a large number of factors such as Smoking, Diabetes, Obesity, Family history etc. However, there is nothing to support that this disease

can be caused due to stress and strain. In view of above, we do not find any valid ground to interfere with the opinion of the RMB declaring his

disease as not connected with service, hence NANA.

8. In this context we would like to quote the opinion of Hon'ble Supreme Court in Civil Appeal No 1837/2009, titled Union of India & Another vs. Ex

Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing

aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by

military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority composed of expert medical

doctors and ills the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual".

9. Additionally, we would also like to quote the opinion of Hon'ble Supreme Court on the expertise of Medical Board in Civil Appeal No 7672 of 2019

in Ex Cfn Narsingh Yadav vs Union of India & Ors as under :-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless

there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical

Board.

10. In view of the above, this Original Application is liable to be dismissed, hence, dismissed.

11. No order as to costs.

12. Pending application(s), if any, also stand disposed off.

~ Pronounced in the open Court on 19th June 2020