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**(20) 06 AFT CK 0018**

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

**Case No:** Original Application No. 371 Of 2020

Anand Mattain Gotil

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:** Praveen Kumar, Prabodh Kumar

**Final Decision:** Allowed

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### **Judgement**

1. Aggrieved by the denial of disability element of pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 02 Nov 2017.

(b) Direct Respondents to grant disability pension @ 50% after rounding off the same from @ 30% for life as recommended by RMB to the

applicant with effect from 01 Feb 2017 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The facts of the case, in brief, are that the applicant was enrolled in the Indian Air Force on 28.01.1991 and was discharged from service on

31.01.2017 in low medical category after rendering more than 26 years of service. The Release Medical Board (RMB) assessed his disability 'NON

ST ELEVATION MI (OLD) 1-21.91Z-09.0' @ 30% for life. However, the RMB opined that the disease of the applicant was neither attributable to

nor aggravated by military service (NANA) and onset of disease in peace area. His claim for disability pension was rejected by the respondents vide order dated 02.11.2017. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in service and any disability not recorded at the time of recruitment should be presumed to have been caused subsequently. The action of the respondents in denying disability pension 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 disease to military service, what is material is whether the disability was detected during the initial recruitment medical tests and if no disability was detected at that time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 30% and the same is to be rounded off to 50% for life.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disability of the applicant @ 30% for life, it opined that the disability is NANA due to onset on peace area. As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant O.A does not have any merit and the same is to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that need to be answered is, whether the disability of the applicant is attributable to or aggravated by military service?

6. We have noted that the only reason for which the disability has been opined as NANA by the RMB is that the disease has originated in peace area and has no association with Fd/HAA/CI area service. However, on further scrutiny, we have observed that the applicant developed 'NON ST

ELEVATION MI (OLD)' i.e. had a heart attack in December 2013 after completion of 22 years of service. We are not convinced that stress & strain of military service is restricted to Field/HAA/CI areas only. We are of the opinion that stress and strain is a part of military service hence it is

present in peace areas also. Hence, we are inclined to give benefit of doubt in this case to the applicant. Thus we are of the considered opinion that

the disability 'NON ST ELEVATION MI (OLD)' is to be considered as aggravated by military service in line with the law settled on this matter by

the Hon'ble Apex Court in the case of Dharamvir Singh (supra). Additionally, the applicant will also be eligible for the benefit of rounding off to 50%,

in terms of the decision of Hon'ble Supreme Court in Union of India and others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

7. Resultantly, the O.A is allowed. The impugned order is set aside. The applicant's disability 'NON ST ELEVATION MI (OLD)' is to be considered

as aggravated by military service. The applicant is entitled to disability element of disability pension @ 30% for life, which shall be broad banded to

50% for life from the date of discharge i.e. 01.02.2017. Ordered accordingly. To be implemented by the respondents within four months from the date

of receipt of a copy of this order. Default will invite interest @ 6% per annum.

8. No order as to costs.

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

10. Pronounced in the open Court on 19th June 2020.