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**(20) 06 AFT CK 0037**

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

**Case No:** Original Application No. 703 Of 2018

A.K. Thakur

APPELLANT

Vs

Union Of India And  
Others

RESPONDENT

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**Date of Decision:** June 17, 0020

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

**Bench:** Division Bench

**Advocate:** J.P. Sharma, V.S. Kadian, V.S. Tomar

**Final Decision:** Disposed Of

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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 letter No B/38046A/352/2016/AG/PG-4 (2'dAppeal) dated 12.06.2017.

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and to grant him disability element of

pension @ 50% by granting benefits of broad banding. And/or

(c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of his retirement. And/or

(d) 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 commissioned in the Indian Army on 26.08.1982 and retired from service on 31.01.2015 in

low medical category after rendering more than 32 years of service. The Release Medical Board (RMB) assessed his disability 'CAD-TVD (POST

CABD) (OLD)' @ 300/o for life. However, the RMB opined that the disease of the applicant was neither attributable to nor aggravated by military

service (NANA). His claim for disability pension was rejected by the respondents vide order dated 12.01.2015. His first and second appeals were also

rejected by the respondents vide order dated 28.06.2016 and 12.06.2017 respectively. Hence the instant O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in service and any disability not

recorded at the time of selection for commissioning 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 pre- commissioning 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.

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 not being connected with service. 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 'CAD-TVD

(POST CABD) (OLD)' in November 2005 after completion of 23 years of service. We are not convinced that there is no stress & strain of military

service in military stations located in peace area, hence, we are inclined to give benefit of doubt to the applicant. Thus we are of the considered

opinion that the disability 'CAD-TVD (POST CABD) (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. Rain 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 'CAD-TVD (POST CABD) (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. In view of the decision of the Hon'ble Supreme Court in Union of India vs. Tarsem Singh reported in 2009 (1) AISLJ 371, the arrears

will be restricted up to a period of three years preceding the date of filing of the O.A. The date of filing of this O.A is 02.04.2018. 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.

Pronounced in the open Court on 17th June 2020.