

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 259 of 2019

Wednesday, this the 3rd day of April 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 16747-F Gp Capt (TS) Dinesh Chandra (Retired), son of Late Shriram, R/O Bungalow No 5, Jalvayuvihar Yojna, Lucknow-226002 (UP), State-Uttar Pradesh.

.....Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, Subroto Park, New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Arun Kumar Sahu**,
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

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

- (a) *The Hon’ble Tribunal may be pleased to set aside the rejection order dated 22.08.2017 (Annexure No A-1).*
- (b) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.03.2017 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (c) *Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 09 months and 26 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order 27.03.2019.

3. The facts in nutshell are that the applicant was commissioned in the Indian Air Force on 08.02.1982 and superannuated on completion of tenure of engagement w.e.f. 28.02.2017. Release Medical Board (RMB) held at AFS, Jalahalli on 14.12.2016 assessed his disabilities (i) Primary Hypertension Old (I 10) @ 30% for life, (ii) DM Type-II (Old) E11 @ 20% for life and (iii) Right Vestibular Schwannoma (Optd) with Moderate Sever (SNHL) C 30.1

@ 15-19% for life but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. Disability pension claim of the applicant was rejected vide order dated 22.08.2017 (**Annexure A-1**). First appeal against rejection of disability pension was preferred by the applicant on 01.06.2018 (**Annexure A-3**) which seems to have not been decided as yet. It is in this perspective that the applicant has preferred the present O.A.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit after his commission as an officer. He has picked up these diseases due to stress and strain of service. He further contended that out of total 35 years of service, which the applicant has put in, he has served for 23 years in field area units involving 24 hours operation to meet the operational commitments for forward area of Indian Air Force which involved long stressful working hours and uncertain environment. The applicant suffered Primary Hypertension and DM Type-II during Jan 2008. Further, on 31.08.2013 the applicant had to undergo Gama Knife Surgery for Right Vesticular Schwannoma for loss of hearing. This has caused due to high decibel noise emanating from high pitch sound of air craft engines. He vehemently pleaded for disability pension to be granted to the applicant.

5. In this case though the respondents have not filed a counter affidavit as yet, however based on medical records, Ld. Counsel for the respondents while filing objection has submitted that the RMB has declared the applicant's disabilities as NANA therefore, he is not entitled to disability pension. The Ld. Counsel has orally submitted that the ground of rejection of disability pension is primarily related to the onset of the disease being at a peace station and not related to a field or high altitude or counter insurgency operational areas. He pleaded the O.A. to be dismissed.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB and rejection order of disability pension claim. The question before us is simple and straight i.e.-is the disabilities of applicant attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** 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)."

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability/aggravation to the applicant by endorsing the following remarks against the disabilities:-

<i>Ser No</i>	<i>Type of Disability</i>	<i>Reasons for denial</i>
(a)	Primary Hypertension	Onset of disability was in peace area (Nagpur) in Jan 08. No close time association with stress & strain of Field/CI Ops/HAA. It is life style disorder and there is no delay in diagnosis.

		<i>Hence not connected with service. Para 43 of Chapter VI of GMO (Mil Pen) 2008.</i>
(b)	<i>DM Type-II</i>	<i>-do-</i>
(c)	<i>Right Vestibular Schwannoma (Optd(with Moderate Sever (SNHL) C 30.1</i>	<i>Onset of disability was in peace area. No close time association with stress & strain of Field/CI Ops/HAA. There is no evidence of occupational hazards/infection. Hence no connected with service. Para 09 & 10 of Chapter VI of GMO (Mil Pen) 2008.</i>

Considering all issues we are of the opinion that the first disability of the applicant i.e. 'Primary Hypertension' can be aggravated by stress and strain of military service in a more significant way as compared to the other two disabilities of the applicant. We also feel that it is unfair for the RMB to opine that because applicant's disease originated in a peace station, therefore he is not entitled to the benefit of aggravation by military service. We feel that peace military stations also undertake intense military training activities and have their own fair share of stress and strain of military service.

9. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant i.e. 'Primary Hypertension' @ 30% for life should be considered as aggravated by military service. However we agree with the opinion of RMB that the other two disabilities of the applicant are NANA by military service.

10. In view of the above, we are of the view that the applicant is held entitled to 30% disability for life which shall stand rounded off to 50% disability for life in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

11. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order dated 22.08.2017 is set aside. The applicant's disability 'Primary Hypertension' @ 30% for life is to be considered as aggravated by military service and is to be rounded off to 50% for life w.e.f. date of discharge i.e. 01.03.2017. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual date of payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: April, 2019
gsr