

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 18 of 2024

Saturday, this the 05th day of April, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Sgt. Bhagwan Singh Bora (Retd) (Service No. 786544-R), R/o Ward 18, Bora Niwas, Adarsh Colony, Udham Singh Nagar, Uttrakhand-262308.

..... Applicant

Ld. Counsel for the Applicant : **Shri Rahul Pal**, Advocate
Shri Tatsat Shukla, Advocate
Shri Dhiraj Kumar, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101 A, South Block, DHQ PO, New Delhi, Pin-110011.
2. The Chief of the Air Staff, Through the Directorate of Air Veterans (DAV), Air HQ, Subroto Park, New Delhi, Pin-110010.
3. The Joint CDA (Air Force), Subroto Park, Delhi Cantt., New Delhi, Pin-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 18 of 2024, for the following reliefs:-

- (a) *To quash and set aside the Applicant’s RMB proceedings to the extent the order denies grant of Disability element of Pension to the applicant.*
- (b) *To set aside the impugned order dated 19 Jul 22 and direct the respondents to grant the disability element of pension @30%, broad-banded to 50%, along with all consequential benefits, with arrears and interest @12% p.a. w.e.f. date of discharge, by treating disease as attributable to and aggravated by military service.*
- (c) *To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.*

2. Briefly stated, the applicant was enrolled in the Indian Air Force on 17.06.2002 and discharged on 30.06.2022 in Low Medical Category on fulfilling the conditions of his enrolment after rendering 20 years and 13 days of regular service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at SMC 15 Wing Air Force C/o

56 APO on 27.08.2021 assessed his disability '**PRIMARY HYPERTENSION (OLD) ICD NO. I 10.0, Z09.0**' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 19.07.2022. The applicant preferred First Appeal dated 17.10.2022 but of no avail. It is in this perspective that the applicant has preferred the present Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the RMB, hence as per Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that "*Unless otherwise specifically provided,*

disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over”

the applicant is not entitled to disability element of disability pension. He further contended that the applicant was found to be overweight since 13.05.2011 during Annual Medical Examination, at that time he was weighing 70 Kg (IBW-61 Kg, BMI-25.1 Kg/m²) and was advised to reduce weight by diet control and regular exercise. Since then, till the time of discharge the applicant remained always in the overweight range and was repeatedly advised to reduce weight by diet control and regular exercise. At the time of detection of disability the applicant was weighing 73 Kg (IBW-65 Kg, BMI-26.17 Kg/m²). Further, the applicant was a drinker vide AFMSF-7A dated 20.03.2018. In the background of overweight and alcohol consumption, the applicant was initially detected to have Primary Hypertension and placed in medical classification A4G4 (Temp) (T-12) vide AFMSF-15 dated 20.03.2018. The applicant was thereafter, reviewed periodically for the disability and was placed in medical classification A4G2 (Permanent) for the disability vide AFMSF-15 dated 24.10.2018. The disability arose only with the applicant's weight gain and alcohol consumption. Lack of exercise, sedentary lifestyle and dietary indiscretion contribute towards an individual being overweight. Ld. Counsel for the respondents contended that certain

diseases like Primary Hypertension and Diabetes Mellitus are primarily due to interplay of metabolic and life style factors and manifest later in life irrespective of service conditions. Obesity or overweight is one of the important factors of the cause of these types of disabilities and failure in maintaining ideal weight, which can be managed by the applicant by regular exercise and restricting diet. Ld. Counsel for the respondents further submitted that the applicant was not overweight at the time of enrolment but he gradually gained weight and by the time of onset of disability applicant was overweight by 25% from ideal weight. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service. He pleaded for dismissal of the Transferred Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered is whether the disabilities of the applicant are attributable to or aggravated by Air Force Service?

6. In the RMB proceedings of the applicant, the disability of the applicant i.e. '**PRIMARY HYPERTENSION (OLD) ICD I-10.0, Z09.0**' is opined as NANA. At the time of discharge from service, we find that applicant's ideal weight was 64 Kg whereas the actual

weight was 80 Kg, over weight is 16 Kg, which is 25% excess than the ideal weight. The onset of disability was in March, 2018. The study of a national and international reports and molecular sciences reveal that obesity and overweight significantly influence the risk of Hypertension. We are of the view that overweight and alcohol play a vital role in disabilities like Hypertension and Diabetes etc. which are a serious health condition that entails a higher risk of cardio-vascular diseases.

7. Further, in the Counter Affidavit it is also mentioned that the applicant was educated about life style measures to reduce weight. He should have reduced his weight to overcome the problem by restricting the diet and required exercise which has not been done by him, therefore, organization cannot be held liable for the own actions of the applicant. There is no denial from the fact that if the claimant is himself not controlling the factors of disability which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions. We do not find any substance in the submission of the Ld. Counsel for the applicant that the disability of '**PRIMARY HYPERTENSON (OLD) ICD I-10.0, Z09.0**' has causal connection with the military service. As such the applicant's disability is held as NANA.

8. In view of the discussions made above, **Transferred Application No. 18 of 2024** lacks merit and same is accordingly **dismissed**.

9. Pending application, if any, stands disposed of.

10. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 05 April, 2025

AKD/-