

**Court No. 1**

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

**ORIGINAL APPLICATION No. 491 of 2023**

Tuesday, this the 08<sup>th</sup> day of August, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 824010-N Ex. NC (E) Satyavir Singh, Lascar, S/o Ratan Lal Singh, R/O H. No. 224, Puja Colony, Rampark Extension, Near D K Model School, Loni, Ghaziabad (UP), Pin-201103.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Chaturbhuj Dwivedi**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Directorate General of Medical Services (Air), Air HQ (RKP), New Delhi.
3. Officer In Charge AV (A&N-SP), Air HQ Directorate of Air Veterans, Subroto Park, New Delhi-110010.
4. DD (Appeal), Directorate of Air Veterans, Subroto Park, New Delhi-110010.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P.).

**.....Respondents**

Ld. Counsel for the Respondents. : **Dr. Chet Narayan Singh**, Advocate  
Central Govt. Standing Counsel

**ORDER****“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- (a) *To quash and set aside the impugned order dated 04 Oct 2022 rejection of the disability pension claim of the applicant passed by respondent No. 3 vide letter No. Air HQ/99798/2/824010/DAV/SP/IMB (Annexure A-1 to compilation No. 1).*
- (b) *To direct the respondents to consider the claim of the applicant for grant of disability pension considering the disablement 20% for Type-II Diabetes Mellitus (Old) (ICD No. E-11.0, Z09), 30% for Primary Hypertension (Old) I-10.0, Z09.0, 100% for Central Retinal Vein Occlusion (Both Eye) (Old) H34.8, Z09.0, 100% for Neovascular Glaucoma – Both Eyes (Old) H40.53, Z09.0 and 40% for Chronic Kidney Disease – Diabetic Nephropathy N 18.9 along with the composite assessment 100% with CAA for life in medical category A4G4 (P) and A(P)G(P) during duty period.*
- (c) *To direct the respondents concerned to pay the dues of the disability pension with arrear which applicable to the applicant since next date of invalidment from service i.e. 04 Sep 2022.*
- (d) *To issue any suitable order or direction which this Hon’ble Tribunal may deem fit and proper under the present facts and circumstances of the case.*
- (e) *To award the cost of proceeding to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 04.10.1996 and discharged/invalided out from service on 03.09.2022 in Low Medical Category after rendering 25 years, 11 months and 01 day of service. At the time of discharge/invalidation from service, the Invaliding Medical Board (IMB) held at 184 Military Hospital, Air Force on 02.04.2022 assessed his disabilities (i) **'DIABETES MELLITUS TYPE -II (OLD) E-11.9, Z09.0'** @20%, (ii) **'PRIMARY HYPERTENSION (OLD) I-10.0, Z09.0'** @30%, (iii) **'CENTRAL RETINAL VEIN OCCLUSION (BOTH EYE) (OLD) H34.8'** @100% with CAA, (iv) **'NEOVASCULAR GLAUCOMA – BOTH EYES (OLD) H40.53, Z09.0'** @100% with CAA and (v) **'CHRONIC KIDNEY DISEASE – DIABETIC NEPHROPATHY N18.9'** @40%, **composite disabilities @100% with CAA for life** and, opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 04.10.2022. The applicant preferred Appeal dated 20.02.2022 and reminder thereto dated 10.04.2023 but of no avail. It is in this perspective that the applicant has preferred the present Original 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. All the diseases of the applicant were contracted during the service, hence they are 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 pension @100% with Constant Attendance Allowance (CAA).

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @100% for life have been regarded as NANA by the IMB, hence as per Regulation 153 of the Regulations for the Indian Air Force, 1961 (Part-I) the applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir***

***Singh Versus Union of India & Others***, 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)."*

7. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disabilities '**DIABETES MELLITUS TYPE -II (OLD) E-11.9, Z09.0**', '**PRIMARY HYPERTENSION (OLD) I-10.0, Z09.0**', '**CENTRAL RETINAL VEIN OCCLUSION (BOTH EYE) (OLD) H34.8**', '**NEOVASCULAR GLAUCOMA - BOTH EYES (OLD) H40.53, Z09.0**' and '**CHRONIC KIDNEY DISEASE - DIABETIC NEPHROPATHY N18.9**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities in August, 2006, October, 2008, December, 2020 and March, 2022 while posted in Peace locations (Amritsar and Suratgarh) and third, fourth and fifth disabilities are outcome of first and second disabilities, therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Invaliding Medical Board for denying disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Air Force training and associated stress and strain of Air Force service. The applicant

was enrolled in Indian Air Force on 04.10.1996 and the disabilities have started after more than 9, 11, 21 and 23 years of Air Force service respectively i.e. in August, 2006, October, 2008, December, 2020 and March, 2022. 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 all the disabilities of the applicant should be considered as aggravated by Air Force service.

8. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018, we are of the considered view that disability element of disability pension

@100% for life may be extended to the applicant from the next date of his discharge/invalidation.

10. We also observe that applicant was 100% disabled as recommended by the IMB that his disability is assessed @ 100% + CAA for life. Therefore, the applicant shall also be granted Constant Attendance Allowance (CAA) in addition to disability element of pension in accordance with the rules/instructions issued by the Govt. from time to time. As per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, Govt. of India, Ministry of Defence letter No. 1(2) 2013-D (Pen/Pol) dated 27.04.2015 and PCDA (P) Allahabad Circular No. 543 dated 27.05.2015, applicant is entitled to Constant Attendance Allowance also.

11. In view of the above, the **Original Application No. 491 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension and Constant Attendance Allowance, is set aside. All the disabilities of the applicant are held as aggravated by Air Force Service. The applicant is entitled to get disability element @100% for life + Constant Attendance Allowance from the date of discharge/invalidation from service. The respondents are directed to grant disability element to the applicant @100% for life + Constant Attendance Allowance from the date of discharge/invalidation from service. The respondents are further



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 @ 8% per annum till the actual payment

12. No order as to costs.

13. Ld. Counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 08 August, 2023

AKD/-