

RESERVED
COURT NO.1

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

ORIGINAL APPLICATION No. 291 of 2018

Tuesday, this the 15th day of January, 2019

"Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP, Sinha, Member (A)"

Ex-Sgt, 716603-K Uttam Chand Yadav son of Shri Bansidhar Yadav, Resident of Vill-Asega, PO-Surajpura, Distt-Ballia (UP)-277301.

.....Applicant

Ld. Counsel for :**Shri Manoj Kumar Awasthi**, Advocate.
the applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Air HQ, Director, Dte of Air Veteran, Subroto Park, New Delhi-110010.
4. Office of Joint CDA (Air Force), New Delhi C/O Air Force Central Accounts Office, Subroto Park, New Delhi-110010.
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the:**Shri G.S. Sikarwar**,
Respondents. Central Government Standing Counsel.

ORDER**“Per Hon’ble Air Marshal BBP SINHA, Member (A)”**

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

- (i) *To issue/pass an order or direction to set aside the order dated 07.07.2015 and 1st Appeal rejection order dated 30.08.2016 and Second Appeal rejection order dated 18.01.2018 passed by respondents (Air HQ, Dte of Air Veterans, Subroto Park, New Delhi) regarding grant of disability element of disability pension in light of Hon’ble Apex Court judgment and Government letter dated 31.01.2001.*
- (ii) *To issue/pass an order or directions to the respondents to grant of disability element of pension to the applicant and rounding off the disability pension from 60% to 75% from the date of discharge i.e., 31.12.2015.*
- (iii) *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (iv) *Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.*

2. Brief facts of the case giving rise to the instant Original Application are that the applicant was enrolled in the Indian Air Force (IAF) on 19.12.1986 and discharged from service on 31.12.2015 in low medical category ‘A4G3(P) COMP’ on fulfilling terms and conditions of enrolment having rendered 29 years of service. Disability pension claim, first and second appeals preferred by the applicant have been rejected by the competent authority

on account of disability being neither attributable to nor aggravated by military service (NANA). Hence this O.A.

3. Ld. Counsel for the applicant drew our attention to Entitlement Rules for Casualty Pensionary Awards, 1982 which provides that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which took place at a later stage is entirely due to stress and strain of military service. The Ld. Counsel for the applicant further pleaded that in such circumstances the applicant is entitled to grant of disability pension. Relying upon the decision of Hon'ble Apex Court in the case of ***Sukhwinder Singh vs Union of India & Ors***, (2014) STPL (Web) 468 SC Ld. Counsel for the applicant pleaded that the applicant is entitled to grant of disability pension and its rounding off from 60% to 75% for life in terms of Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar & Ors***, Civil Appeal No 418 of 2012 dated 10th December 2014.

4. On the other hand, Ld. Counsel for the respondents submitted that during annual medical examination in Jul 2009, the applicant for the first time was found over

weight. He was referred to Medical Specialist for his opinion where on investigation he was diagnosed a case of obesity and was placed in low medical category A4G4 (T 24). During periodical medical board in 2012 he was also found to be suffering from Panic Disorder and Alcohol Dependence Syndrome but during review/re-categorization board he was finally placed in medical category A4G4(P) vide board proceeding dated 03.09.2014. At the time of Release Medical Board (RMB) held on 11.02.2015 he was recommended to be released in medical category A4G3(P) with composite disability @ 60% for life as NANA. Ld. Counsel for the respondents further submitted that order dated 07.07.2015 rejecting claim for disability pension, 30.08.2015 rejecting first appeal of the applicant and 18.01.2018 rejecting second appeal of the applicant are just and proper in accordance with law and there is no illegality in that hence deserve no interference. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. Having given our anxious consideration to the pleadings on record and arguments of both the counsels we find that the applicant while undergoing annual medical examination in the year 2009 was found over weight and on this account he was referred to Medical

Specialist for further opinion. The applicant was diagnosed as a case of obesity. He was managed conservatively by Medical Specialist and was opined to be placed in low medical category. During periodical review the applicant was also found to be suffering from 'Panic Disorder' and 'Alcohol Dependence Syndrome'. Applicant's RMB was held on 11.01.2015 by which the disabilities suffered by him were assessed (i) Metabolic Syndrome @ 30% and (ii) Panic Disorder @ 40% (composite disability @ 60%) for life and NANA which were also upheld by pension sanctioning authority as well Appellate Committees at the time of adjudication of the claim for grant of disability pension.

7. While rejecting second appeal vide order dated 18.01.2018 the respondents have given cogent reasons as to why the aforementioned disabilities were considered as NANA. The relevant extracts of order dated 18.01.2018 are excerpted below:-

“ID (i) Metabolic Syndrome is a life style disorder and per se not attributable to service. This condition is a clustering of at least three of five entities of hypertension, IGT/Diabetes mellitus, hypertriglyceridemia, obesity and low HDL levels. Exact cause is now known though life style related factors such a dietary indiscretions and lack of exercise along with genetic factors are implicated. Therefore the condition is not attributable to service. He was diagnosed promptly and treated adequately with no service related stressors causing worsening. Hence ID (i) is conceded as neither attributable to nor aggravated by military service. ID (ii) is psychiatric disorder and may be due to a complex interaction of multiple genetic vulnerabilities coupled with environmental, biological, and psychological stressors during early childhood development or structural and neuro-chemical damage to the brain in infancy manifesting in adult life as a psychiatric ailment. Attributability to military service is conceded when onset is during war like situations, threat to life by enemy action in CI Ops of extreme environmental conditions of prolonged Fd/HAA service. Aggravation is

*conceded when onset is associated with denial of leave, physical/sexual abuse or if individual serves in Field area/CI Ops/HAA following onset. In this instant case onset of ID was in Peace area and individual continued to serve in peace area thereafter. There were no documented service related stressors. **Moreover the onset was also linked to alcohol dependence syndrome which is due to excessive intake of alcohol with loss of voluntary control and is not related in onset or course to military service.** Hence ID (ii) is conceded as neither attributable to nor aggravated by military service in terms of Para 54, Chap VI, GMO 2002, amendment 2008.”*

(Bold and underlined by me)

8. We are further of the view that obesity plays a vital role in disability like 'Metabolic Syndrome' which is a serious health condition that entails a higher risk of cardiovascular disease and diabetes. Since on account of obesity the applicant was referred to Medical Specialist, he should have reduced his weight to overcome the problem. Additionally, as brought out vide order dated 18.01.2018, excess consumption of alcohol could also be a contributory factor for Metabolic Syndrome. We do not find any substance in the submission of the Ld. Counsel for the applicant that metabolic syndrome has causal connection with the military service. Military is a combatant force where only physically and mentally fit soldiers can discharge onerous duties to safeguard our mother land. It has therefore rightly been observed by the authorities concerned, while rejecting first and second appeals of the applicant, that disability suffered by the applicant is neither attributable to nor aggravated by military service.

9. Thus in the facts and circumstances of the case, we are in agreement with the views expressed by the respondents while rejecting appeals of the applicant and we are further of the considered view that the disabilities suffered by the applicant are neither attributable to nor aggravated by military service. The applicant is not entitled to disability pension.

10. In view of the above, the applicant has not been able to make out a case. The O.A. deserves to be dismissed and is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: January, 2019
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