

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 427 of 2019**Tuesday, this the 23th day of February 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. NR-18748K, Lt Col (MNS) (Retd) Tara Gupta, wife of Naresh Kumar Gupta, R/o 1/303, New Malhar, Sahara State, Jankipuram, Lucknow- 226002.

.....Applicant

Ld. Counsel for : **Shri Manoj Kumar Awasthi and**
Applicant **Shri Anshuman Srivastava**

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi- 110011.
2. Additional Directorate General of Personnel Services/AG's Branch, IHQ of Ministry of Defence (Army) Room No- 11, Plot No- 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
3. MPRS (O), IHQ of MoD (Army), L Block, New Delhi, Pin- 110001.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) To issue pass an order or directions to set aside/quash the order no. NR-18748K/MPRS(O)/381/2017/AG/PS-4 (Imp-1) dated 04.07.2017, order no. NR-18748/MPRS(O)/11/2018/Appeal/ AG/PS-4 (Imp-II) dated 02.07.2018 and Order no B/38046A/23/2019/AG/PS-4 (2nd Appeal) dated 10.07.2019 passed by respondent no. 2.

(b) To issue pass an order or directions to the respondents to grant Disability Element of Disability Pension element @50% with effect from date of superannuation i.e. 30.06.2017 in light of Hon’ble Apex Court judgments.

(c) To issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of disability pension @ 50% to @ 75% for life to the applicant and pay due arrears including consequential benefits with interest @ 12% pa till final payment is made in light of Hon’ble Apex Court judgments and letter dated 31.01.2001.

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted along with cost of the OA.

2. The undisputed factual matrix on record is that the applicant was commissioned in Indian Army on 19.12.1986

and was superannuated from service on 30.06.2017 in low medical category S1H1A1P3(P)E1. At the time of superannuation the Release Medical Board held on 22.02.2017 assessed his disabilities (i) “**OBESITY**”- 1-5% (ii) “**PRIMARY HYPERTENSION**”- 30% (III) “**DYSLIPIDEMIA**” – 1-5% and (iv) “**TYPE-2 DIABETES MELLITUS**” - 20% and composite assessment for all disabilities was 50% for life and net assessment qualifying disability pension was Nil for life and disabilities were considered as neither attributable to nor aggravated by the military service. The applicant was granted service pension with effect from 01.07.2017 for life. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 04.07.2017 being neither attributable to nor aggravated by military service. Applicant then preferred first and the second appeal for the grant of disability pension but the same were also rejected by the respondents vide order dated 02.07.2018 and 10.07.2019. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. Learned counsel for the applicant submitted that the applicant was commissioned in the army in medically fit condition and, thereafter, he was retired from service in Low Medical Category with disabilities (i) “**OBESITY**”- 1-5% (ii) “**PRIMARY HYPERTENSION**”- 30% (III) “**DYSLIPIDEMIA**” –

1-5% and (iv) **“TYPE-2 DIABETES MELLITUS”** - 20% and composite assessment for all disabilities as 50% for life. He pleaded for the disabilities of the applicant to be considered as a result of stress and strain of military service. He further pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is also entitled to disability pension and its rounding off to 75%.

4. On the other hand, learned counsel for the respondents contended that disabilities of the applicant have been assessed composite @ 50% for life by RMB as neither attributable to nor aggravated by military service, and onset is also in peace area and not connected with service, therefore, in terms of Regulations 81 of Pension Regulations for the Army, 2008, Part-1, which stipulates that service personnel who is invalided out from service on account of disability which is attributable to or aggravated by such service may be granted a disability pension consisting of service element and disability element, therefore, his claim for the grant of disability element has been rightly rejected. He further pleaded that Para 37 of Pension Regulations for the Army, 2008, Part-1, states that an officer who retires on attaining the age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service

and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement, if the degree of disability is accepted at 20% or more. Learned counsel for the respondents further submitted that at the time of RMB, disabilities of the applicant were held as neither attributable to nor aggravated by Military Service, therefore, her claim was rejected. Further, the competent authority after examining the case in the light of relevant rules and administrative provisions have rejected both the appeals. He thus pleaded that O.A. being devoid of merit be dismissed with cost in the interest of justice.

5. We have heard Shri Manoj Kumar Awasthi, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents and have also perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. As far as disabilities "**OBESITY**" and "**DYSLIPIDEMIA**" are concerned, they have been assessed @ 1- 5% by RMB and considered as neither attributable to nor aggravated by military service due to being not connected with military duty. The above disabilities being considered neither attributable to nor

aggravated by military service and also being assessed below 20%, we are in agreement with RMB opinion of declaring it NANA and therefore, applicant is not entitled to disability pension for these disability as per the pronouncement of Hon'ble Supreme Court in Civil Appeal No 10870 of 2018, ***Union of India & Ors vs Wing Commander SP Rathore***, wherein it has been clearly held clear vide order dated 11.12.2019 that disability element is inadmissible when the disability percentage is below 20%.

8. As far as disability "**PRIMARY HYPERTENSION**"- 30% and "**DIABETES MELLITUS TYPE-2**" – 20% are concerned, the law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 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)."

9. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/ aggravation to applicant for his disability **“PRIMARY HYPERTENSION”**- 30% and **“DIABETES MELLITUS TYPE-2”**- 20% by declaring the disease as NANA is that both have originated in peace area and has no close time association with Fd/HAA/CI Ops service. However, on further scrutiny, we have observed that these disabilities were initially detected in the year 2004 & 2015 after about 18-29 years of service. We are, therefore, of the considered opinion

that the reasons given in RMB for declaring both diseases as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of *Dharamvir Singh* (supra) and therefore his disabilities "**PRIMARY HYPERTENSION**" and "**DIABETES MELLITUS TYPE-2**" should be considered as aggravated by military service.

10. Applicant's all four disabilities were assessed @ composite 50%, hence after excluding '**OBESITY**' and '**DYSLIPIDEMIA**' and taking into consideration the composite percentage of "**PRIMARY HYPERTENSION**" and "**DIABETES MELLITUS TYPE-2**" only, the composite percentage as assessed will be proportionately reduced and it will come down between 40 to 50%, say below 50% as per degree of disablement formula being adopted by the medical authorities.

11. In view of the above, applicant is held entitled to below 50% disability element for life from his date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element to 50% for life in terms of the decision of Hon'ble Supreme Court in *Union of India and*

others v. Ram Avtar (Civil Appeal No 418 of 2012 dated 10.12.2014).

12. As a result of foregoing discussion, the O.A. is partly allowed. The impugned orders passed by the respondents are set aside. The disabilities "**PRIMARY HYPERTENSION**" and "**DIABETES MELLITUS TYPE-2**" of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ less than 50% for life duly rounded off to 50% for life from the date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 23 February, 2021

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