

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 552 of 2019**Monday, this the 4th day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 633000-B Ex WO Prakash Narayan Shukla
Son of Late Onkar Nath Shukla
R/o Plot No. 283/21, Binobha Nagar,
Gandhi Gram, Harjinder Nagar-II
Kanpur – 208007 (UP)

..... 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 Rajiv Pandey**,
Central Govt Counsel.**ORDER****“Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

“(I) The Hon'ble Tribunal may be pleased to set aside the rejection order dated 04/01/2012 (Annexure No A-1).

- (II) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01/09/2011 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.
- (III) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 25.05.1974 and was discharged from service on 31.07.2011 (AN) in low medical category after serving more than 37 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **“TYPE II DIABETES MELITUS (Old)” @ 15-19% for life**, (ii) **“PRIMARY HYPERTENSION (Old)” @ 30% for life** and (iii) **“FRACTURE LV1 (Fresh)” @ 20% for life** and opined that all the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 04.01.2012. Thereafter, applicant submitted a representation dated 10.01.2014 which has not been replied by the respondents and his appeal dated 16.04.2019 is still pending with the respondents. Being denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh***

vs. Union of India & Others (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 50%. Though, prayer for rounding off of disability pension has not been made in the Original Application but during the arguments, learned counsel for the applicant also prayed for rounding off of disability pension.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities of the applicant (i) @15-19%, (ii) @30% and (iii) @20% for life but it opined that the disabilities are NANA and net assessment qualifying first and second disabilities is NIL and for third disability – it is to be decided by competent administrative authority. As such, under the provisions of Rule 153 of Pension Regulations for Indian Air Force 1961 (Part 1), his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records. The question which needs to be answered is whether the disabilities of the applicant are attributable to or aggravated by Military Service?

6. After going through the opinion of the medical board, we have noted that the first disability "Type II Diabetes Mellitus" has been opined as NANA by the RMB being metabolic disorder not attributable to service. The third disability, "FRACTURE LV1 (Fresh)" is injury sustained while on leave, hence not connected with service as approved vide injury report dated 08.04.2011. Hence, we are of the opinion that benefit of doubt in both the disabilities cannot be given to the applicant and we agree with RMB opinion that both the disabilities are NANA.

7. As far as second disability i.e. 'Primary Hypertension' is concerned, we have noticed that the only reason for declaring the disease as NANA is that it has originated in peace area and has no close time association with Fd/CI Ops/HAA tenure. However, on further scrutiny, we have observed that this disability was detected in 2009, after about 35 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as NANA are 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. Thus, we are of the considered opinion that second disability ie. "Primary Hypertension" @ 30% for life is to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra).

8. The applicant will also be eligible for the benefit of rounding off of second disability from 30% to 50% for life in terms of the decision of the

Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

9. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned order is set aside. The applicant's disability "Primary Hypertension" @ 30% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 30% to 50% for life from the date of his discharge i.e.31.07.2011. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 01.10.2019. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: January, 2021
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