

Court No. 1

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

Original Application No. 553 of 2019

Wednesday, this the 02nd day of December, 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 606852-R Ex JWO Bagish Kumar Bajpai son late Mathily Sharan Bajpai, R/O 46A, Tulsinagar, Near 37 New PAC Line, Post Office-37 New PAC Line, Kanpur-208015 (UP).

.... **Applicant**

Ld. Counsel for the: **Shri R Chandra** , Advocate.
Applicant

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: **Shri Shyam Singh**, Advocate
Respondents. Assisted by **Maj Sini Thomas**,
Departmental Representative

ORDER (Oral)

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

- (I) The Hon'ble Tribunal may be pleased to set aside the rejection order dated 01.02.1995 (Annexure No A-1) and order dated 24.09.2019 (Annexure No-2).*
- (II) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.05.1995 to 30.04.1996 for two years along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) The Hon'ble Tribunal may be pleased to direct the respondents to conduct further Re-Survey medical board for assessment of disability, if any.*
- (IV) 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. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of approx 24 years, 01 month and 29 days. Since payment of pension involves recurring cause of action, as such, the delay has been condoned vide order dated 16.10.2019.

3. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 11.04.1969 and after having completed more than 26 years of service he was discharged from service in low

medical category BEE (permt) on 30.04.1995. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held on 23.09.1994 which assessed the applicant to be suffering from 'Essential Hypertension (old) V-67 @ 30% for two years and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim preferred by the applicant was rejected vide order dated 09.01.1996. First Appeal dated 14.07.2019 against rejection of disability pension claim was turned down vide order dated 24.09.2019 because it was not filed within the specified time frame. Hence this O.A.

4. Ld. Counsel for the applicant submitted that applicant was enrolled in the Air Force in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the

applicant is that applicant, in July 1988 while posted at Halwara, was diagnosed to be suffering from 'Essential Hypertension (Old) V-67'. This disease he feels is due to stress and strain related to rigors of military service. He concluded by pleading for grant of disability pension to applicant.

5. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disability as NANA, therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the disease as NANA on grounds of the disease having no relation to service conditions.

6. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

7. 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 213. 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 invalidated 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)."

8. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disease is constitutional in nature'. We do not find this cryptic remark

adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in July 1988 i.e. after completion of about 20 years of his service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability of the applicant should be considered as aggravated by military service.

9. In view of the above applicant is held entitled to 30% disability element for two years which shall stand rounded off to 50% disability element for two years from the date of his discharge i.e. 01.05.1995.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 09.01.1996 is set aside. The disability of the applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is extended. As far as payment of arrears of disability element is concerned, Hon'ble the Apex Court in the case of ***Shiv Dass vs Union of India & Ors*** reported in 2007 (3) SLR 445 has held that arrears of disability pension are restricted to three years prior to filing of the O.A. if the same is filed belatedly and delay is condoned. Since applicant's disability was assessed for two years from the date of discharge, he is eligible for disability element for that period only. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical

condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to outcome of RSMB.

11. No order as to costs.

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

Dated: 02 December, 2020

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