

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 34 of 2020**Thursday, this the 21st day of January, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No 671398-N MWO (HFC) Chandra Pal Singh (Retd), S/o Shri Chote Lal Singh, R/o 153-A Rampuram, Shyam Nagar, Post – COD, District – Kanpur (U.P.)- 208013.

..... ApplicantLd. Counsel for the : **Shri Shailendra Kumar Singh,**
Applicant Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, (IAF), South Block, New Delhi-110066.
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi -110011.
3. Director III A (DP), DAV, Air Hqrs, Subroto Park, New Delhi-110010.
4. SAO (AF), O/O the Jt CDA (AF), Subroto Park, New Delhi – 110010.
5. PCDA (P) (Air Force), Draupadi Ghat, Allahabad (U.P.)- 212114.

.....RespondentsLd. Counsel for the : **Mrs Anju Singh,**
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 respondent No 3 letter Air HQ 99798/1/671368/03/18/DAV(DP/RMB) dated 08 Nov 2017 (Annexure A-1 of instant OA & impugned order) wherein applicant was rejected for grant of disability pension/element and first appellate committee rejection vide their letter No Air HQ/99785/5/498/2019/671368/DP/AV-III(Appeals) dated 25 Sep 2020 (Annexure A-6 of OA).*
- (B). *To issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the date of his retirement from service (01.04.2018) and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- (C). *To grant the benefit of rounding off of the disability pension from 40% to 50% in terms of Govt of India letter dated 31 Jan 2001 with effect from 01.04.2018 and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- (D). *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 22.03.1980 and was discharged on 31.03.2018 (AN) in Low Medical Category A4G2 (Permanent) on fulfilling the terms of engagement. At the time of retirement from service, the Release Medical Board (RMB) held at 7 Air Force Hospital, Kanpur assessed his disabilities (i) **'CATARACT (LT) EYE WITH PSEUDOPHAKIA OPTD (OLD)'** @ 14-19% for life and (ii) **'PRIMARY HYPERTENSION (OLD)'** @ 30% for life composite disability 40% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 08.11.2017. The applicant preferred First Appeal which too was rejected vide letter dated 25.09.2020. 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 Indian Air Force. The diseases of the applicant were contacted 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 as well

as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered composite disabilities to the extent of 40% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disabilities (i) **‘CATARACT (LT) EYE WITH PSEUDOPHAKIA OPTD (OLD)’** @ 14-19% for life and (ii) **‘PRIMARY HYPERTENSION (OLD)’** @ 30% for life and composite assessment for all disabilities as 40% for life but disabilities qualifying for disability pension have been assessed as NIL for life and disabilities are found as neither attributable to nor aggravated by Air Force service. As per Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I), the primary conditions for the grant of disability pension are “Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by Air Force service and assessed at 20% or over.” Since the disability of the applicant was considered as NANA, hence claim of the applicant for the grant of disability pension has correctly been rejected.

5. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by Air Force service and 40% disability can be rounded off to 50% or not?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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. Thus, considering all issues we have noted that the only reason given by RMB for denying Attributability for disease (i) **'CATARACT (LT) EYE WITH PSEUDOPHAKIA OPTD (OLD)'** and (ii) **'PRIMARY HYPERTENSION (OLD)'** are that it started in a peace area and it is constitutional in nature and not connected with service. We are not convinced by this logic that stress & strain of Air Force life is only in Fd/HAA/CI areas and there is no such stress in peace areas. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of ***Dharamvir Singh*** (Supra). Therefore, we consider the diseases of the applicant i.e. (i) **'CATARACT (LT) EYE WITH PSEUDOPHAKIA OPTD (OLD)'** @ 14-19% for life and (ii) **'PRIMARY HYPERTENSION (OLD)'** @ 30% for life" composite disabilities 40% for life as aggravated by Air Force service.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

9. In view of the above the Original Application deserves to be allowed.

10. Accordingly O.A. is **allowed**. The impugned orders dated 08.11.2017 and 25.09.2020 rejecting the claim for grant of disability pension passed by the respondents are set aside. The composite assessment for disabilities as 40% for life are to be considered as aggravated by Air Force service. The respondents are directed to grant disability element to the applicant from the date of discharge @ 40% for life which would stand rounded off to 50% for life. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

11. No order as to costs.

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

Dated : 21 January, 2021

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