

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 547 of 2022**Friday, this the 6<sup>th</sup> day of January, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**No. 694828-K Ex-WO Prabhat Kumar Upadhyay  
S/o Prem Chandra Upadhyay  
R/o Village & Post – Raghunathpur, District – Buxar (Bihar) – 802134  
Now residing at 701, Lal Behra, Bamrauli,  
Prayagraj (UP) PIN-211012

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, holding brief of  
**Shri Sudhir Kumar Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, New Delhi -110011.
3. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010.
4. DIR-III, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010.
5. Jt. CDA, AF, Subroto Park, New Delhi PIN-110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Alok Kumar Mishra**,  
Central Govt Counsel**ORDER**

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:-

“(1) To quash the impugned illegal order dated 16.01.2020, which is annexed as Annexure No. 1 to this original application, by which the claim of disability pension of applicant is rejected.

- (2) To pass an order or direction commanding the respondent to grant the benefits disability pension to the applicant from the next date of discharge, i.e. 01.03.2020 along with interest @ 12% per annum till the actual realization of aforesaid amount.
- (3) To pass an order or direction commanding the respondent to grant the benefits of rounding of the disability pension up to tune of 50% in term of Govt. of India letter dated 01.11.2009 and various judgment of Apex Court as well as this Hon'ble Tribunal.
- (4) To pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.
- (5) Allow the original application with cost.”

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 02.02.1985 and was discharged from service on 29.02.2020 (AN) in low medical category on attaining the age of superannuation after rendering more than 36 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **“OBESITY”** @ 1-5%, (ii) **“HYPOTHYROIDISM”** @ 15-19% and (iii) **“FRACTURE SHAFT OF TIBIA AND FIBULA RT (OPTD)”** @ 20%, composite assessment @ 40% for life and opined the disabilities as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 16.05.2016. On 12.01.2017, applicant submitted his appeal for grant of disability pension which has not been replied by the respondents. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service while serving in different units/formation of the Indian Air Force in different terrain, atmosphere and even performing continuous duty for long periods including night duties which resulted in the development of the disabilities, hence disabilities are attributable to and aggravated by Military Service in view of the latest judgment of this Tribunal as well as the judgments of the Hon'ble Apex Court.

4. Learned Counsel for the applicant further submitted that respondents have rejected disability pension claim of the applicant vide their letter dated 16.01.2020. The applicant in pursuant to respondents letter dated 16.01.2020, preferred an appeal on 25.03.2020 which has not yet been decided by the respondents. He pleaded that applicant's disabilities have been assessed @ 40% for life which are attributable and aggravated by military service, therefore, applicant be granted disability pension duly rounded off to 50% from the next date of discharge from service.

5. On the other hand, Ld. Counsel for the respondents contended that first disability (Obesity) of the applicant is assessed @ 1-5% and considered as NANA by the IMB which is a life style related disorder. Second disability (Hypothyroidism) of the applicant is assessed @ 15-

19% and considered as NANA by the IMB which is an auto immune / endocrine disorder occurred while posted at peace station. Third disability (Fracture Shaft of Tibia and Fibula Rt (Optd) of the applicant is assessed @ 20% and considered as NANA by the IMB as injury sustained by the applicant while kicking/starting his bike in SNCO living in complex, thus, third disability has no causal connection with military duty. Though all disabilities of the applicant have been assessed composite @ 40% for life by RMB but considered as neither attributable to nor aggravated by military service and not connected with service.

6. Learned counsel for the respondents further submitted that applicant was found over weight since 2005 as per details/table given in para 6 of the counter affidavit. He was advised to reduce weight by regular exercise and dietary restrictions, however, applicant failed to maintain his weight and he was placed in low medical category A4G4 (Temporary) vide medical board dated 16.04.2009. In the background of obesity and non adherence to medical advice to reduce weight, he was detected to have Obesity, Hypothyroidism and Hypertriglyceridemia and placed in composite medical classification A4G4 (Temp) (T24) vide medical board dated 16.04.2009. The applicant was placed in low medical classification for Hypertriglyceridemia vide medical board dated 31.08.2016. The applicant was detected Fracture Right Distal 3<sup>rd</sup> Shaft Tibia Fibula (Optd) and was placed in low medical category vide medical board dated 14.03.2017. Finally applicant was placed in permanent low

medical category A4G4 by medical board w.e.f. 19.07.2018. The RMB of the applicant was held on 25.07.2019 not solely on medical grounds and applicant was discharged from service on 29.02.2020. Hence, as per Para 153 of Pension Regulations for the Air Force 1961 (Part-1), applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension. He pleaded for dismissal of the O.A.

7. Heard learned 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.

8. We have noted that the applicant suffered with three disabilities. First disability (Obesity) of the applicant is assessed @ 1-5% as NANA which is a life style related disorder and second disability (Hypothyroidism) of the applicant is assessed @ 15-19% as NANA which is an auto immune endocrine disorder occurred/caused due to non adherence to medical advice to reduce weight, hence, it is result of first disability (Obesity). Third disability (Fracture Shaft of Tibia and Fibula Rt (Optd) of the applicant is assessed @ 20% as NANA as injury sustained by the applicant while kicking/starting his bike in SNCO living in complex, thus, this disability has no causal connection with military duty.

9. The detailed reasons for considering all three disabilities of the applicant as neither attributable to nor aggravated by military service by the medical board as given in IMB are given below :-

- (a) First disability (Obesity) being NANA is "It is a life style related disorder. It is due to dietary indiscipline and lack of exercise. On set of disease while posted at peace station. There is no delay in diagnosis. No close time association of stress/strain of Field/HAA/CIOPS service."
- (b) Second disability (Hyperthyroidism) is "An auto immune/endocrine disorder occurred while posted at peace station, onset : July 2015. No close time association service factor. Hence, disability is neither attributable nor aggravated by service.
- (c) Third disability (Fracture Right Leg) has no causal connection with air force duty as mentioned in Commanding Officer Statement in Injury Report attached with Original Application on page 18, that :-
- (a) Was the injury sustained – Yes  
 (1) In the performance of air force duty? – No  
 (2) In a game or other form of physical recreation definitely organized by or with the approval of the proper air force authority? – No

The Statement given by the applicant attached with Original Application on page 17 reads that applicant sustained injury in his right leg while kicking/starting his bike. The Statement is reproduced as under :-

"STATEMENT

I, 694828-K WO PK Upadhyay Eqpt Asst of HQ MC, State that I fell down in front of SNCO Living in Block while cicking the bike for starting at around 2300 Hrs on 28 Oct 16, and sustained injury on my Right Leg.

Date : 16 Jan 17

Sd/- x x x x x"

10. Thus, from the statement of the applicant and Commanding Officer, it is established that applicant's third disability is not suffered while performing air force duty and therefore, third disability has no causal connection with air force duty and hence, in view of judgment of the Hon'ble Apex Court in ***Union of India vs Ex Naik Vijay Kumar***, (2015) 10 SCC 460, ***Ex Nk Dilbagh Singh vs Union of India***, 2008 (106) Delhi Reported Judgments 865 and in ***Union of India & ors vs. Baljit Singh***, reported in (1996) 11 SCC 315, in which the Hon'ble Courts have observed that in each case where a disability pension is sought for and made a claim, it must be affirmatively established as a fact as to whether the disability/injury sustained was due to military service/duty, hence, third disability of the applicant is NANA as considered by the IMB .

11. As per Para 153 of Pension Regulations for the Air Force 1961 (Part-1), disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's first and second disabilities are assessed below 20% for life as NANA, applicant does not fulfil the requirement of Para 153 of Pension Regulations for the Air Force 1961 (Part-1). Though, third disability of the applicant is assessed @ 20% for life as NANA but injury sustained by the applicant has no causal connection with air force duty, hence, applicant is not entitled to disability element for third disability also.

12. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 ***Union of India & Ors vs Wing Commander SP Rathore***, has made

it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

*“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”*

13. As a result of foregoing discussion, we hold that the claim of applicant's disability element has rightly been rejected by the respondents which needs no interference. Resultantly, Original Application is **dismissed**.

14. No order as to costs.

19. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: January, 2023

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