

**Court No. 1 (E. Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 678 of 2021**

Tuesday, this the 26<sup>th</sup> day of April, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

JC- 1700064X Ex. Sub. Shambhu Dayal Shrivastwa S/o Late Tota Ram Shrivastava, Resident of Ambedkar Colony, Bholepur, PO- Fatehgarh , District-Farrukhabad (U.P.) Pin – 209601.

..... Applicant

Ld. Counsel for the : **Shri Bachchan Singh**, Advocate.  
Applicant

Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, New Delhi-110011.
2. Officer - in - Charge, AMC Records, Lucknow, Pin - 226002.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj (Allahabad), Pin – 211014.

.....**Respondents**

Ld. Counsel for the : **Shri Shyam Singh**, Advocate  
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:-

- “8.1 This Hon’ble Tribunal may graciously be pleased to set aside and reject the order of respondent No.1 (Govt. of India) dated 18 Feb 2000 rejecting the appeal of the applicant Annexure No.A-1.*
- 8.2 The decision and order of the Chief CDA (P) Allahabad (Annexure No. A-4 ) dated 14 July 1998 may graciously also be pleased to set aside and rejected as it acted without jurisdiction.*
- 8.3 This Hon’ble Tribunal may further be gracious enough to allow the claim of the applicant (Annexure A-3) dated 02 Apr 1998 by granting disability pension for disability No.1 D (i) (Primary Hypertension) @ 20% for life with rounding off @50% for life.*
- 8.4 Any other beneficial relief which this Ho’ble Tribunal may deem, fit, just and proper may also be granted to the applicant and against the respondents.*
- 8.5 Cost of this application may graciously be granted to the applicant.*

2. Briefly stated, applicant was enrolled in Indian Army on 31.10.1969 and was discharged 31.10.1997 (A/N) in Low Medical Category EEE (Permanent) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital Ambala on 11.02.1997 assessed his disabilities (i) **‘PRIMARY HYPERTENSION’ @ 20%** for two years and (ii) **‘LUMBAR SPONDYLOSIS’ @ 20%** for two years, **composite disabilities @40% for two years**, but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. The Principal Controller of Defence Accounts has accepted his second

disability i.e. '**LUMBER SPONDYLOSIS**' as aggravated and granted disability pension @20% for two years with effect from 01.11.1997 to 10.02.1999 vide PPO dated 05.06.1998. However, the first disability i.e. '**PRIMARY HYPERTENSION**' has been considered as NANA by military service which was communicated to the applicant vide letter dated 14.07.1998. The applicant's Re-Survey Medical Board held at Military Hospital, Agra on 10.03.1999 assessed his disability @20% for five years. Accordingly, applicant was granted disability pension vide PPO dated 30.08.1999. The applicant preferred Appeal dated 28.10.1998 which was rejected by the respondents vide letter dated 18.02.2000. The Second Re-Survey Medical Board held at Military Hospital, Agra on 01.03.2001 assessed his disability @20% permanent with effect from 10.03.2001. Accordingly, he was granted disability pension @20% for life vide PPO dated 13.09.2001. The applicant preferred O.A. No. 135 of 2017 in this Tribunal for rounding off of disability pension which was allowed vide order dated 01.05.2017 holding that applicant is entitled for benefit of rounding off from 20% to 50% for life, three years prior to filing of the Original Application i.e. 11.01.2017. Accordingly, in compliance of the said order, a Corrigendum PPO dated 04.12.2017 has been issued by granting rounding off benefits to the applicant @50% against 20% for his disability '**LUMBER SPONDYLOSIS**'. It is in this perspective that the applicant has preferred the present O.A.

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 Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. Both the diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. Although the PCDA has accepted only second disability i.e. '**LUMBER SPONDYLOSIS**' as aggravated by military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension as well as arrears thereof for the first disability also. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability element of disability pension and its rounding off to 50% for the first disability also.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities @40% have been regarded as NANA, although second disability i.e. '**LUMBER SPONDYLOSIS**' has been accepted by the PCDA (P), Allahabad as aggravated by military service and accordingly disability element of disability pension was granted. Since the first disability i.e. '**PRIMARY HYPERTENSION**' has been opined by RMB to be neither attributable to nor aggravated by military service and same

has been accepted by the PCDA (P), Allahabad his claim for grant of disability element of disability pension for the first disability was not granted. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

(a) Whether the first disability i.e. '**PRIMARY HYPERTENSION**' of applicant is attributable to or aggravated by military service?

(b) Whether the applicant is entitled for the benefit of rounding off of his disability element of disability pension for the first disability also?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 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)].  
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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. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the first disability '(i) **PRIMARY HYPERTENSION**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The applicant was enrolled in Indian Army on 31.10.1969 and the disability has started after more than 25 years of Army service i.e. on 31.01.1995. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of

***Dharamvir Singh vs Union of India & Ors*** (supra), and the first disability i.e. '**PRIMARY HYPERTENSION**' of the applicant should also be considered as aggravated by military service.

8. We observed that earlier the applicant had preferred Original Application No. 135 of 2017 in this Tribunal for rounding off of disability pension which was allowed vide order dated 01.05.2017 holding that applicant is entitled for benefit of rounding off from 20% to 50% for life, three years prior to filing of the Original Application i.e. 11.01.2017. Accordingly, a Corrigendum PPO dated 04.12.2017 has been issued by granting rounding off benefits to the applicant @50% against 20% for his disability '**LUMBER SPONDYLOSIS**'. We also observed that composite disability for both the disabilities has been assessed @40% for two years by the RMB. Even if we hold the first disability @20% for life as aggravated by military service, then also since composite disabilities was 40%, it can be rounded off to 50% at most which the applicant is anyhow already getting. As such applicant is not entitled for any further relief.

9. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 26 April, 2022

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