

Court No. 1

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

Original Application No. 1041 of 2022

Monday, this the 10th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ex MWO (HFO) Ram Kewal Dubey No. 690499-N S/O Late Sri Lalita Prasad Dubey R/O - H. No. C 114, Divya Nagar, Post - Khorabar, District - Gorakhpur (Uttar Pradesh), PIN – 273010.

-----Applicant

Ld. Counsel for the Applicant: **Shri Rama Kant, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi
2. Chief of Air Staff Air HQ (Vayu Bhawan) Rafi Marg, New Delhi
3. Principal Director, Directorate of Air Veteran, Subroto Park, New Delhi – 110010
4. Joint Controller of Defence Accounts, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Chet Narayan Singh,
Central Govt Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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:-

“8.1 Set aside the impugned order dated 21 Oct 2022 & direct the respondents to treat the Ex-soldier’s physical disability as attributable to military service and Grant disability pension @ 52% to the Applicant for life.

8.2 Order to rounding of his disability pension from @52% to @75% by broad banding.

8.3 Order to release the arrears from the next date of retirement i.e. from 01.04.2022 till the date of payment with 09% interest per annum.

8.4 Award the cost of litigation Rs. 30000.00 (Rs Thirty Thousand only) in favour of the Applicant.

8.5 Pass any other order that this Hon’ble Tribunal may deem fit in the facts and circumstances of the case.”

2. Counter and rejoinder affidavits filed by the Id. Counsel for the respondents and applicant respectively are taken on record.

3. The facts of the case, in brief, are that applicant was enrolled in Indian Air Force on 19.09.1983 and was discharged from service

on 31.03.2022(AN) in low medical category on completion of terms of engagement after serving 38 years 06 months and 13 days of service. At the time of retirement, Release Medical Board (RMB) assessed his disabilities (i) **“DVT LEFT LOWER LIMB WITH PULMONARY THROMBO EMBOLISM (OLD)”** @ 20% for life and (ii) **“CHRONIC KIDNEY DISEASE- CHRONIC INTERSTITIAL NEPHRITIS (OLD)”** @ 40% 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 23.02.2022. Thereafter, applicant submitted first appeal dated 08.08.2022 which was not replied. Then the applicant filed second appeal dated 08.09.2022 which was rejected by the respondents vide order dated 21.10.2022. Being denied for disability element, the instant Original Application has been filed.

4. 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 element 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 @ 52%. Learned counsel for the applicant also prayed for rounding off of disability pension from 52% to 75% by broad banding.

5. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that the RMB had assessed the first disability **“DVT Left Lower Limb with Pulmonary Thromboembolismies”** as Neither attributable to nor aggravated by Air Force service. The root cause of this disease is overweight. The weight of Air Veteran as per RMB was 85 kgs, hence this disability cannot be treated as attributable to and aggravated by Air Force Service. Learned counsel for the respondents submitted that Second disability of the applicant i.e. **‘Chronic Kidney’** was also considered as NANA. 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.

6. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records. The questions which needs to be answered are;

(a) whether the disabilities of the applicant are attributable to or aggravated by Military Service?

(b) whether the applicant is entitled for rounding off disability element?

7. After going through the opinion of the medical board, we have noted that the disability “**DVT LEFT LOWER LIMB WITH PULMONARY THROMBO EMBOLISM (OLD)**” and (ii) “**CHRONIC KIDNEY DISEASE- CHRONIC INTERSTITIAL NEPHRITIS (OLD)**” have been opined as NANA by the RMB being overweight and hence are not attributable to service.

8. As far as first disability “**DVT Left Lower Limb with Pulmonary Thromboembolism**” is concerned, it occurred due to overweight. As per Release Medical Board dated 18.08.2021, held at 4 Wing Air Force, weight of Air Veteran was 87 kg. Being overweight is an independent modifiable risk factor for contracting ‘**Pulmonary Thromboembolism**’. The Air Veteran had modifiable risk factor that was well within his control, but he did not control his

weight which resulted in development of “**Pulmonary Thromboembolism**”. The root cause of the ailment with which the air veteran suffered was due to overweight and older age. Therefore, this disease cannot be treated to be attributable to and aggravated by service conditions. The case laws relied upon by the applicant are based on different facts. In those cases, applicants were not overweight.

9. As far as second disability i.e. **Chronic Kidney** 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 2014, after about 31 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disease as NANA is 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 disability “**CHRONIC KIDNEY DISEASE-CHRONIC INTERSTITIAL NEPHRITIS (OLD)**” 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).

10. The applicant will also be eligible for the benefit of rounding off of disability from 40% 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).

11. Resultantly, the O.A. deserves to be partly allowed, hence partly **allowed**. The impugned orders passed by the respondents rejecting the claim for grant of disability element are set aside. The applicant's second disability "**CHRONIC KIDNEY DISEASE-CHRONIC INTERSTITIAL NEPHRITIS (OLD)**" @ 40% for life is to be considered as aggravated by Air Force service and his disability element of pension is to be rounded off from 40% to 50% for life from the next date of his discharge i.e. 31.03.2022. 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.

12. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 10th April, 2023
RKM/-