

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 127 of 2023**Wednesday, this the 05th day of April, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

JWO (Retd.) Vinod Kumar Tiwari (Service No. 696400-A) presently residing at Village Pakriyar, Poorab Patti (Tiwari Patti Road), PO Seorahi, Distt- Kushinagar, U.P - 274406.

-----Applicant

Ld. Counsel for the Applicant: **Shri Keshav Sharma, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi - 110 011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhavan, Rafi Marg, New Delhi - 110 106.
3. The Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi - 110010.
4. The PCDA (Pension) Draupadi Ghat, Allahabad.
5. The JCDA (Air Force), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Anurag Mishra,
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:-

- “(i) Declare the disabilities “RHD AS/AR POST AROIC VALVE REPLACEMENT MECHANICAL PROSTHESIS (OLD)” as aggravated by the Military Service.*
- “(ii) Grant the disability element of pension to the Applicant @50% w.e.f. 01 Mar 2022 for life with all consequential benefits and*
- “(iii) To issue/pass any other / direction as this Hon’ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant and render justice.”*

2. Counter affidavit filed by the respondents is taken on record.

3. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 01.08.1985 and was retired from service on 28.02.2022 (AN) in low medical category after serving 36 years of service. The Release Medical Board (RMB) assessed his disability “**RHD AS/AR POST AROIC VALVE REPLACEMENT MECHANICAL PROSTHESIS (OLD)**” @ 30% for life. The composite assessment of disability is @ 30% whereas the net

assessment has been assessed as NIL for life. The RMB has opined that the disability of the applicant was 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 31.12.2021. Thereafter, applicant submitted first appeal dated 30.05.2022 which is still pending before the respondents. Being aggrieved with denied by disability pension, 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 commission should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension 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 may be considered as aggravated by

service and applicant be granted disability pension @ 30% and rounded off to 50%.

5. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disabilities of the applicant **RHD AS/AR POST AROIC VALVE REPLACEMENT MECHANICAL PROSTHESIS (OLD)** @30% for life but it opined that the disability is NANA and net assessment qualifying disability is NIL. He pleaded that the disability **RHD AS/AR POST AROIC VALVE REPLACEMENT MECHANICAL PROSTHESIS (OLD)** occurred in peace station. As such, under the provisions of Rule 153 of Pension Regulations for IAF 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. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Air Force Service?

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

7. After going through the opinion of the medical board, we have noted that the disability has been opined as neither attributable to nor aggravated by the RMB.

8. We have noticed that the only reason for declaring the disease as not attributable 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 April 1997, after about 12 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as not attributable 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 i.e. "**RHD AS/AR POST AROIC VALVE REPLACEMENT MECHANICAL PROSTHESIS (OLD)**" @ 30% for life is to be considered as aggravated by military service because stress and strain of Air Force service in line with the law settled on this matter by the Hon'ble Apex Court in the case of **Dharamvir Singh** (supra).

9. The applicant will also be eligible for the benefit of rounding of disability from 30% 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).

10. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders dated 31.12.2021 is set aside. The applicant is getting service element for the services rendered by him. The applicant's disability **RHD AS/AR POST AROIC VALVE REPLACEMENT MECHANICAL PROSTHESIS (OLD)** is to be considered as aggravated by Air Force service and his disability element of pension is to be rounded off from 30% to 50% for life from the date of his retirement i.e. 01.03.2022. 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.

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 05th April, 2023
rk/-