

Court No. 1

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

Original Application No 151 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)”

Group Captain Chinmoy Banerjee (Retd.) r/o B-72, Nirala Nagar,
Lucknow, U.P. - 226020.

-----Applicant

Ld. Counsel for the Applicant: **Shri Amit Asthana , Advocate**

Versus

1. Union of India through its 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. Air Cmde. AV, Directorate of Air Veterans, Subroto Park,
New Delhi - 110010.
4. The JCDA (Air Force), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri JN 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) To issue / pass an order or direction of appropriate nature to the Respondents to set aside/quash the impugned orders dated 29.11.2021 and 12.10.2022.*
- “(ii) Direct the respondents to treat the applicant’s disabilities viz. Primary Hypertension and Dyslipidaemia as attributable to and or aggravated by the air force service;*
- “(iii) To direct the respondents to round off the composite disability element of Primary Hypertension and Dyslipidaemia from 30% to 50%.*
- “(iv) To direct the respondents to grant the applicant with the 50% disability element of pension from the date of superannuation i.e. 31.12.2021 alongwith interest @ 12% p.a till its payment to the applicant.*
- “(v) Pass any other or such further Order or orders deem fit to this Hon’ble Tribunal in order to*

secure the ends of justice in favour of the applicant.”

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

3. The facts of the case, in brief, are that applicant was commissioned in the Indian Air Force on 15.06.1990 and was retired from service on 31.12.2021 (AN) in low medical category after serving 32 years of service. The Release Medical Board (RMB) assessed his disabilities (i) “**PRIMARY HYPERTENSION (OLD)**” @ 30% for life and (ii) “**DYSLIPIDAEMIA**” @ 5% for life. The composite assessment of disabilities are @ 30% whereas the net assessment has been assessed NIL for life. The RMB has 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 29.11.2021. Thereafter, applicant submitted first appeal dated 09.06.2022 which has also been rejected by the Respondents vide order dated 12.10.2022. 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 commissioned 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 (i) @30% and (ii) @5% for life but it opined that the disabilities are NANA and net assessment qualifying disabilities is NIL. He pleaded that Primary Hypertension is a multi factorial disorder with a genetic preponderance. It may be held aggravated if its onset is in Field/HAA/ CI Ops. Disability Dyslipidemia (Old) is also opined as NANA being a metabolic disease with inherited enzyme deficiency and excessive intake of

saturated fats with no causal connection to service. In the instant case, onset of disabilities occurred while serving 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 Ld. Counsel for the applicant as also Ld. Counsel for the respondents. 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 all the disabilities have been opined as neither attributable to nor aggravated by the RMB.

8. We have noticed that the only reason for declaring the diseases as not attributable are that these disabilities originated in peace area and has no close time association with Fd/CI

Ops/HAA tenure. However, on further scrutiny, we have observed that these disabilities were detected in Aug 2017, after about 26 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. "Primary Hypertension" @ 30% for life 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).

9. The applicant will also be eligible for the benefit of rounding off 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 rejecting claim of the applicant for grant of disability element dated 29.11.2021 and 12.10.2022 are set aside. The applicant is getting service pension for the services

rendered by him. The applicant's disabilities are to be considered as aggravated by military 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. 01.01.2022. 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) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated: 05 April, 2023

rk/-