

**Court No. 1 (Taken up in Court No. 3)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Transferred Application No 22 of 2022**

Thursday, this the 22<sup>nd</sup> day of December, 2022

**Hon'ble Mr. Justice Anil Kumar, Member (J)**

**Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)**

Gp Capt (TS) Rajeev Moitra (19471) Adm (Retd)  
R/o 546, Udyan-2, Eldeco Raibareilly Road,  
Lucknow – 226025

..... Petitioner

Ld. Counsel for the Petitioner: **Wg Cdr S.N. Dwivedi(Retd)**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi – 110011.
3. Air Commodore, Directorate of Air Veteran, SMC Building, 1<sup>st</sup> Floor, Subroto Park, New Delhi- 110010.
4. JCDA (Air Force), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Central Govt Counsel

**ORDER**

1. The petitioner, being discharged from the Air Force filed O.A. No. 1868 of 2020 before the AFT (PB) New Delhi under Section 14 of the Armed Forces Tribunal Act, 2007, which has

been transferred to this Tribunal and has been registered as T.A. No. 22 of 2022, whereby the petitioner has sought following reliefs:-

- “(a) Setting aside of impugned order dated 23 Oct 2020 (Annexure A-1).
- (b) Direction to the respondents to grant 30% of disability element of pension to the applicant broad banding the same to 50% as per Board Band Policy w.e.f. 07.03.2015 with 9% interest per annum on the arrears.
- (c) Any other/further relief as this Hon’ble Tribunal deems fit in the facts and circumstances of the case.”

2. Briefly stated facts of the case are that petitioner was commissioned in the Indian Air Force on 07.12.1988. During service, petitioner was suffering from (i) “**PRIMARY HYPERTENSION**” and (ii) “**DYSLIPIDEMIA**”. The petitioner was retired from the Indian Air Force at his own request on 07.03.2015 in low medical category. The Release Medical Board (RMB) assessed his disabilities (i) “**PRIMARY HYPERTENSION**” @ 30% for life and (ii) “**DYSLIPIDEMIA**”. @ 1-5% for life, composite disability @ 30% for life and opined the disabilities as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the petitioner was rejected by the respondents vide order dated 11.05.2015. The petitioner’s first appeal was also rejected vide order dated 23.10.2020. It is in this perspective that the petitioner has preferred the present application.

3. Learned Counsel for the petitioner pleaded that at the time of commissioning, the petitioner was found mentally and physically fit while joining service and there is no note in the service documents that he was suffering from any disease at the time of commission. The disabilities of the petitioner, (i) "**PRIMARY HYPERTENSION**" and (ii) "**DYSLIPIDEMIA**" were contracted during the service, hence both are attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316 and pleaded that petitioner be granted disability pension @ 30% duly rounded off to 50% in view of the Hon'ble Apex Court judgment in the case of ***Union of India vs. Ram Avtar***, decided on 10.12.2014.

4. Ld. Counsel for the respondents contended that disabilities of the petitioner have been assessed composite @ 30% for life by RMB as neither attributable to nor aggravated by military service. The disabilities of the petitioner originated in peace area and not connected with service. Hence, as per Regulation 37 of Pension Regulations for the Air Force 1961 (Part-1), petitioner 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.

5. 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. The question before us is simple and straight i.e. – are the disabilities of petitioner attributable to or aggravated by military service?

6. The disabilities of the petitioner have been assessed @ 30% for life as NANA and the law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 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)]. [pic]*

*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/aggravation, we find that the RMB has denied attributability/aggravation to petitioner for his disabilities for the reason by declaring the disease as NANA being originated in peace areas and not connected with service. However, on further scrutiny, we have observed that first disability was initially detected in the year 2004 and second disability in Nov 2007 after about 16 and 19 years of service respectively. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disabilities as NANA are 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

petitioner as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and his disabilities should be considered as aggravated by military service.

8. In view of the above, petitioner is held entitled to 30% disability element for life from his date of retirement from service. The petitioner will also be eligible for the benefit of rounding off of disability element to 50% for life in terms of the decision of Hon'ble Supreme Court in **Union of India and others v. Ram Avtar** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. Resultantly, the Transferred Application is **allowed**. The impugned orders passed by the respondents are set aside. The disabilities of the petitioner are to be considered as aggravated by military service. The petitioner is entitled to disability element of disability pension @ 30% for life duly rounded off to 50% for life from the next date of retirement from service. The respondents are directed to grant disability element @ 50% for life from the next date of retirement from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v. Union of India and others** (2007 (3) SLR 445), the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of initial filing of this O.A in the AFT (PB)

New Delhi is 24.11.2020. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

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

**(Lt Gen Rakesh Kumar Anand)**  
**Member (A)**

Dated: 22 December, 2022  
SB

**(Justice Anil Kumar)**  
**Member (J)**