

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No 26 of 2022

Thursday, this the 15th day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)

Sqn Ldr Saurav Jagnani (Retd)
State Bank of India road,
Near Sangeet Vidya Mandir,
Makatpur, Girdih (Jharkhand) – 815301

..... Petitioner

Ld. Counsel for the Petitioner: **Shri J.L. Joel**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101A, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi – 110106.
3. Air HQ, Dte of Air Veterans, Subroto Park, New Delhi- 110010.
4. Joint Controller, Defence Accounts (Air Force), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,
Central Govt Counsel

ORDER

1. The petitioner, being discharged from the Army on the ground of medical disability filed OA No. 1472 of 2021 before the AFT (RB) Kolkata 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. 26 of 2022, whereby the petitioner has sought following reliefs:-

- “(a) To direct the respondents to grant the disability pension @ 20% broad banded to 50% for life in view of the Hon’ble Apex Court Judgment in Rajbir Singh (supra) and Dharambir Singh (supra) by treating the disabilities as attributable and aggravated to military service.
- (b) To direct the respondents to set aside the impugned order and pay the due arrears of disability pension with interest @ 10% p.a. with effect from the date of retirement with all the consequential benefits, or
- (c) To direct the respondent to grant service element of disability pension taking into account the full commissioned service rendered by the petitioner as authorized by letter No. 1(9)/2006/D (Pen-C) dated 30 August 2006 issued by Govt. of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
- (d) To pass such further order or orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”

2. Briefly stated facts of the case are that petitioner was commissioned as a Short Service Commissioned Officer in the Indian Air Force on 08.01.2009. During service, petitioner was diagnosed with “**DIABETES MELLITUS TYPE-II**” in 2016. The petitioner was

retired from Indian Air Force on completion of his tenure of SSC w.e.f. 07.01.2019. The Release Medical Board (RMB) assessed his disability “**DIABETES MELLITUS TYPE-II**” @ 20% for life and opined the disability as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the petitioner was rejected by the respondents vide order dated 27.08.2019. The petitioner’s first appeal was rejected vide order dated 14.10.2020. Thereafter, petitioner submitted second appeal which was also rejected by the respondents vide order dated 30.06.2021. 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 disease of the petitioner, “**DIABETES MELLITUS TYPE-II**” was contracted during the service, hence it is 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 ***Sikhwinder Singh vs. Union of India (Civil Appeal No. 5605 of 2010, decided on 25.06.2014)*** and pleaded that petitioner be granted disability pension @ 20% 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 disability of the petitioner has been assessed @ 20% for life by RMB as neither attributable to nor aggravated by military service. The disability of the petitioner originated in peace area and being a metabolic disorder, it is 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. – is the disability of petitioner attributable to or aggravated by military service?

6. The disability of the petitioner “**DIABETES MELLITUS TYPE-II**” has been assessed @ 20% 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 disability for the reason

by declaring the disease as NANA being a metabolic disorder and not connected with service, originated in peace area. However, on further scrutiny, we have observed that the disability was initially detected in the year 2016 after about 7 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disability 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 petitioner as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, petitioner is held entitled to 20% 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. As a result of foregoing discussion, the Transferred Application is **allowed**. The impugned orders passed by the respondents are set aside. The disability of the petitioner is to be considered as

aggravated by military service. The petitioner is entitled to disability element of disability pension @ 20% 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 filing of this O.A in the AFT (PB) New Delhi is 22.07.2021. 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: December, 2022

SB

(Justice Umesh Chandra Srivastava)
Member (J)