

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 727 of 2023

Friday, this the 12th day of January, 2024

**“Hon’ble Justice Anil Kumar, Member (J)
Hon’ble Lt Gen Anil Puri, Member (A)”**

Ex MWO (HFO) Gulab Singh (Air Force No 661417-H) son of Sri Babu Singh, R/o House No 715, Shivepuri, PO-Harjinder Nagar, District-Kanpur (Uttar Pradesh), Pin-208007.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Air Staff, Rafi Marg, New Delhi-110011.
3. Principal Director, Directorate fo Air Veterans (DAV), AFRO Building, Subroto Park, New Delhi-110010.
4. Principal Controller of Defence Accts, Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh-211014.

.....Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Shukla**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- A. *Set aside the impugned order of RMB dated 21.04.2016 and direct the respondents to treat the Ex Soldier's physical disability as attributable to military service and grant disability pension @ 70% to the applicant for life.*
- B. *Direct the respondents to decide the representation dated 22 May 2023 within stipulated period.*
- C. *Order to rounding of his disability pension from @ 70% to 75% by broad banding.*
- D. *Order to release the arrears from the previous three years from the date of filing the application till the date of payment with 09% interest per annum.*
- E. *Award the cost of litigation Rs 50,000.00 (Rs fifty thousand only) in favour of the applicant.*
- F. *Pass any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Air Force (IAF) on 22.08.1978 and discharged on 31.12.2016 (A/N) in Low Medical Category A4G3(P) on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at Air Force Station, Kanpur on 21.04.2016 assessed his disabilities (i) '**Primary Hypertension**' @ 30% for life and (ii) '**Diabetes Mellitus**' @ 20% for life neither attributable to nor aggravated (NANA) by military service, and (iii) '**Chronic Kidney Disease Old N-18**' @ 40% for life attributable to

military service. His composite disability for all diseases has been assessed @ 70% for life. Based on adjudication by AOC, AFRO, since disability No (iii) has been assessed as attributable to military service, applicant is in receipt of 50% disability element of pension w.e.f. 01.01.2017 for disability No (iii) vide corrigendum PPO No 08/14/15664/2016 dated 04.07.2019. Applicant has filed this O.A. for grant of 75% rounded off disability element of pension w.e.f. 01.01.2017 for all aforementioned disabilities

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any diseases at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence these are attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the RMB has assessed applicant's disabilities (i) Primary

Hypertension @ 30% for life and (ii) Diabetes Mellitus Type-II @ 20% for life and NANA by military service therefore, under Regulation 53 (a) of Pension Regulations for the Army, 2008 (Part-I), the applicant is not entitled to disability element of pension for disabilities No (i) and (ii). It is further submitted by learned counsel for the respondents that since applicant's third disability i.e. Chronic Kidney disease has been assessed @ 40% for life attributable to military service, he is already in receipt of 50% disability element of pension for this disability. He pleaded for dismissal of the Original Application stating that disabilities (i) and (ii) being NANA, applicant is not entitled to grant of disability element of pension for said disabilities.

5. 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 (i) and (ii) of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On perusal of record, we find that the applicant was found to be suffering from Primary Hypertension w.e.f. 01.10.1999, Diabetes Mellitus w.e.f. 12.05.2012 and Chronic Kidney disease w.e.f. 24.08.2015. As per RMB, applicant has been assessed first disability to be 30% for life and NANA, the second disability to be 20% for life and NANA and the third disability to be 40% for life attributable to military service. He is in receipt of 50% rounded off disability element of pension for third disability. The composite disability for all disabilities has been assessed @ 70% for life. Therefore, we would like to find out whether the disabilities 'Primary Hypertension' and 'Diabetes Mellitus' @ 30% and 20% for life respectively are attributable to or aggravated by military service.

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 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)."

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by

endorsing that the disabilities to be NANA by military service on the ground of onset of disabilities while posted in peace location, therefore, applicant is not entitled to disability element of pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 22.08.1978 and the disability No (i) had started in the year 1999 (i.e. after 11 years of service) and disability No (ii) had started in the year 2012 (i.e. after 24 years of service). We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh*** (supra), and the disabilities of the applicant should be considered as aggravated by military service.

9. Applicant's composite percentage of all three disabilities has been assessed @ 70% for life. Since the applicant is already in receipt of 50% disability element of pension for disability No (iii) i.e. Chronic Kidney disease, therefore, he is entitled for grant of 25%

disability element of pension for disabilities No (i) and (ii) w.e.f. date of discharge from service i.e. 01.01.2017, but due to law of limitation the arrears shall be restricted to three years preceding filing of O.A. which was filed on 03.07.2023.

10. In view of the above, the **Original Application No. 727 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of pension, is set aside. The disabilities (i) '**Primary Hypertension**' and (ii) '**Diabetes Mellitus**' of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element of pension @ 25% for life from the next date of his discharge i.e. 01.01.2017 but arrears shall be payable w.e.f. July, 2020. The respondents are directed to grant disability element of pension to the applicant @ 25% for life w.e.f. July, 2020. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a. till the actual payment

11. No order as to costs.
12. Miscellaneous application (s), pending if any, stand disposed off.
13. Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Lt Gen Anil Puri)
Member (A)
Dated :12.01.2024
rathore

(Justice Anil Kumar)
Member (J)