

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 945 of 2023**Wednesday, this the 24<sup>th</sup> day of January, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Service No. 652844-R Ex. Sergeant Sushil Kumar Shukla, H. No.1/888, Ambika Puram, Shukla Ganj, Ganga Ghat, District – Unnao, Uttar Pradesh, PIN-209861.

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, Vayu Bhavan, New Delhi-110106.
3. The Air Force Record Office, 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 : **Shri G.S. Sikarwar**, Advocate  
Respondents. Central Govt. Counsel  
Assisted by MWO S.K. Mishra,  
Departmental Representative

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

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

- (a) *Quash the Impugned order passed by the respondents vide AFRO 2703/652844/8/93Pen&Wel (DP) dated 12 Feb 1997 and Declare the disability IHD (INFERIOR WALL MYOCARDIAL INFARCTION) as aggravated by the Military Service.*
- (b) *Grant disability element of pension to the Applicant @50% w.e.f. 01 Sep 1994 for life with all consequential benefits and direct the respondents to conduct RSMB for further assessment of disability.*
- (c) *To issue/pass any other orders/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. Briefly stated, applicant was enrolled in Indian Air Force on 01.09.1979 and was discharged on 31.08.1994 in Low Medical Category on fulfilling the conditions of his enrolment after rendering 15 years of service. At the time of discharge from service, the Release Medical Board (RMB) held at 2 Wing Air Force on 10.08.1994 assessed his disability ‘**IHD (INFERIOR WALL MYOCARDIAL INFARCTION) 410**’ @20% for one year but opined the disability to be neither attributable to nor aggravated (NANA) by Air Force service. The applicant’s claim for grant of disability element of disability pension was rejected vide letter dated

07.02.1997 which was communicated to the applicant vide letter dated 12.02.1997. The applicant preferred application dated 23.09.2005 which too was rejected vide letter dated 16.12.2005. It is in this perspective that the applicant has preferred the present Original Application.

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 Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50% for life.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. **'IHD (INFERIOR WALL MYOCARDIAL INFARCTION) 410'** @20% for one year has been regarded as NANA by the RMB, hence the applicant is not entitled to disability element of disability pension. He further submitted that the applicant had personal history of smoking vide opinion of Senior Advisor (Medicine & Cardiology) dated 28.07.1994. The applicant was initially detected to have IHD (Inferior Wall Myocardial Infarction) at Pune vide AFMSF-16 dated

10.08.1994. He was thereafter, reviewed periodically for the disability and was placed in low medical classification CEE (Permanent) vide AFMSF-16 dated 10.08.1994. He pleaded for dismissal of the Original Application.

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 and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by Air Force service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability element of disability pension?

6. 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)].*  
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*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, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**IHD (INFERIOR WALL MYOCARDIAL INFARCTION) 410**' is neither attributable to nor aggravated (NANA) by service on the ground of constitutional in nature, therefore, applicant is not entitled to disability element of disability 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 disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Even peace Stations have their own pressure of rigorous Air Force training and associated stress and strain of Air Force service. The applicant was enrolled in Indian Air Force on 01.09.1979 and the disability has started after more than 14 years of Air Force service i.e. on 27.05.1994. 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 vs Union of India & Ors*** (supra), and the disability of the applicant should be considered as aggravated by Air Force service.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. one year from 31.08.1994.

9. Since the applicant's RMB was valid for one year w.e.f. 31.08.1994, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board (RSMB) for him to decide his future eligibility to disability element of disability pension.

10. In view of the above, the **Original Application No. 945 of 2023** deserves to be partly allowed, hence, **partly allowed**. The impugned orders, rejecting the applicant's claim for the grant of

disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Air Force service. The applicant is entitled to get disability element of disability pension @20% for one year from the next date of his discharge. Respondents are directed to grant disability element of disability pension to the applicant @20% for one year from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

11. No order as to costs.

12. Master Warrant Officer S.K. Mishra, 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 the case the plea is rejected.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

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

Dated : 24 January, 2024

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