

Court No. 1 (E-Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 370 of 2021

Monday, this the 12th day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex Cpl Ramdhan Tripathi, No 670475 through his legal wedded wife Smt Sushila Tripathi, W/o No. 670475, R/o Vill- Gauatri Nagar, P.O.- Kanaraghat, District – Gorakhpur (U.P.).

..... Applicant

Ld. Counsel for the Applicant : **Shri Vijay Kumar Pandey, Advocate.**

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, RK Puram, New Delhi- 110011.
2. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
3. PCDA (P) (Air Force), Draupadighat, Allahabad (UP)- 211014.

.....**Respondents**

Ld. Counsel for the Respondents. : **Ms. Anju Singh,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

“(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned order, if any, after summoning the same from the opposite party and grant the disability pension to the husband of the applicant w.e.f. 12.03.1990, with 18% p.a. since due date to actual date of payment.

“(ii) That this Hon’ble Tribunal may be please to award the cost of this original application and legal expenses Rs. 20,000/- (twenty thousand) and allow the same.

2. The delay in filing Original Application is condoned being pensionary matter and M.A. No 443 of 2019 is disposed off accordingly.

3. Briefly stated, applicant’s husband was enrolled in Indian Air Force on 06.09.1979 and was discharged on 12.03.1990 in Low Medical Category under the clause “On being found medically unfit for further service in the Indian Air Force” after rendering 10 years and 188 days of regular service. Applicant’s husband was died on 22.06.2020. Husband of the applicant was in receipt of service element of disability pension from the date of discharge i.e. 13.03.1990. At the time of retirement from service, the Invaliding

Medical Board (IMB) held at 5 Air Force Hospital assessed disability of the husband of the applicant '**Personality Disorder**' @ 50% for two years and considered it as neither attributable to nor aggravated (NANA) by Air Force Service. Claim for grant of disability pension was rejected vide letter dated 10.06.1992. It is in this perspective that the applicant has preferred the present O.A.

4. Learned Counsel for the applicant pleaded that at the time of enrolment, the husband of 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 husband of the applicant was contracted during 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 husband of the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the husband of the applicant is entitled to disability pension and its rounding.

5. On the other hand, Ld. Counsel for the respondents contended that disability '**Personality Disorder**' of husband of the applicant has been regarded as 50% for two years by IMB. However, since the disability was opined by IMB to be neither

attributable to nor aggravated by Air Force service his claim for grant of disability pension was rejected. The medical document of the husband of the applicant has been destroyed after stipulated period of retention on 29.02.2006. He pleaded for dismissal of the O.A.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We find that the questions which need to be answered are of two fold :-

(a) Whether the disability of the husband of the applicant is attributable to or aggravated by Air Force service?

(b) Whether the husband of the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

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)].
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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)."

8. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the husband of the applicant only by endorsing that the disability '**Personality Disorder**' to be neither attributable to nor aggravated (NANA) by Air Force service, Constitutional in origin and not connected with service. We find that when the husband of the applicant joined the Air Force, he was medically examined and found to be in Shape-I

and the aforesaid disability was contracted during Air Force service which resulted in the downgrading of his medical category. In absence of any evidence on record to show that the husband of the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service and the husband of the applicant is entitled to the relief as per law settled on this matter in case of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the husband of the applicant should be considered as aggravated by Air Force service, as such the husband of the applicant is entitled for the disability pension for two years from the date of his discharge. We are also of the view that case of the husband of the applicant cannot be referred to Review Medical Board for reassessing the medical condition for further entitlement of disability pension as the husband of the applicant has died.

9. On the issue of rounding off of disability pension, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the husband of the applicant is not entitled to broad banding as he retired from service on 12.03.1990.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly, O.A. is **allowed**. The impugned order passed by the respondents rejecting the claim for the grant of disability pension is set aside. The respondents are directed to grant disability pension to the husband of the applicant @ 50% for two

years from the date of discharge. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 12 July, 2021

Ukt/-