

Reserved Judgment
E-Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 201 of 2020

Friday, this the 23rd day of July, 2021

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

No. 722858-R Sgt Surendra Kumar (Retd), S/o Shri Baijnath Yadav, R/o House No- 320, Chandrashekhar Azad Nagar Colony, Daroga Kheda, PO- Aurawan District- Lucknow (U.P.)- 22604.

..... Applicant

Ld. Counsel for the Applicant: **Shri Shailendra Kumar Singh**
Applicant **and Shri Ravi Kumar Yadav,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (IAF), South Block, New Delhi-110066.
2. The Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi -110011.
3. The Director III A (DP), DAV, Air Head Quarters, Subroto Park, New Delhi-110010.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad – 211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Pushpendra Mishra,**
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.

- (A). *To quash and set aside the Respondent No 3 letter No. Air HQ/99798/1/722858/12/17/DAV(DP/RMB) dated 08 Nov 2017 (Impugned Order and annexed as Annexure A-1) wherein applicant was rejected for grant of disability element.*
- (B). *To issue/pass an order or directions of appropriate nature to the respondents having an effect that disability is aggravated by military services.*
- (C). *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant @ 15%-19%, deemed to be 20% for life, which would stand rounded off to 50% (in terms of Govt of India letter dated 31 Jan 2001) for life from the date of discharge i.e. 01.01.2018 and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- (D). *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicants.*

2. Considering that in pensionary matters bar of limitation is not applicable, delay in filing Original Application is condoned.

3. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 12.12.1991 and was discharged on 31.12.2017 (AN) on fulfilling the conditions of his enrolment in Low Medical Category A4G3 (Permanent). At the time of retirement from service, the Release Medical Board (RMB) held at Suryalanka, Bapatla (Andhra Pradesh), on 18.02.2017 assessed his disability "**SENSORI-NEURAL HEARING LOSS (B/L) (OLD) H 90.3. Z09.0**" @ 15-19% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. Applicant was granted service pension vide PPO dated 02 Feb 2018 from the date of retirement. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 08.11.2017 as the disability was assessed less than 20%. It is in this perspective that the applicant has preferred the present Original Application.

4. Learned counsel for the applicant pleaded that at the time of enrolment, he was found mentally and physically fit for service in the Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment. He submitted that during his 26 years of service, he has served in various field/ High Altitude and counter insurgency areas and soldiers have to work in shift duties, thus environmental condition leads to stress and strain which has affected his health badly. He emphasised that the disability has been caused due to prolonged

exposure to loud noise (aero engine), hence the aforesaid disability is connected with service and conceded as aggravated by service. He further submitted that claim for the grant of disability pension was wrongly rejected on the ground of disability percentage being less than 20% and NANA. The applicant contracted the ailment during service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof and its rounding off to 50%. He relied upon the judgments of Armed Forces Tribunal, Principal Bench, New Delhi, in the cases of ***O.A. No 47 of 2017, Lt Gen Sandeep Singh (Retd) vs. Union of India and others***, decided on 18.04.2017 and ***O.A. No 1706 of 2018, Sqn Ldr VK Thakur (Retd) vs. Union of India and others***, decided on 10.05.2019. He also relied upon the judgment of the Hon'ble Apex Court in the case of ***Sukhvinder Singh vs Union of India & Ors***, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

5. Rebutting arguments of the applicant, Ld. Counsel for the respondents submitted that applicant is getting service element of pension for his 26 years of service in Air Force. The disability of the applicant is not due to any injury or outcome of any infection and not related to service, hence his disability was assessed as neither

attributable to nor aggravated by air force service. He further submitted that the disability pension claim of the applicant was rightly rejected because Release Medical Board has assessed the degree of disablement between 15 -19% which is less than the minimum requirement of 20% for the grant of disability pension and held the same as neither attributable nor aggravated by Air Force service, therefore, the disability pension is inadmissible to the applicant.

6. We have heard learned counsel for the parties and perused the record. The questions which needs to be answered are of three folds:-

- (a) Whether the applicant is entitled to disability pension despite disability being less than 20% and he being discharged on completion of terms of engagement?
- (b) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability pension?

7. In so far as disability which is shown to be assessed as less than 20% is concerned the Guide to Medical Officers (2008), has amended the earlier Regulation (2002) regarding percentage of disability to be granted to such cases. As per the 2008 amendment

(Chapter VII Para 20) assessment of hearing loss shall be treated @ 20% minimum.

8. The law is settled that even if disability percentage is 20%, it would stand rounded off to 50% (in cases of superannuation also).

The case in point relied upon by the Applicant is **Sukhhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined....."

9. 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)."

10. We find that the RMB has denied attributability to the applicant only by endorsing that the disability of the applicant is not due to any injury or outcome of any infection and not related to service. It is an undisputed fact that the applicant was enrolled in Indian Air Force on 12.12.1991 in fully fit condition after rigorous medical examination and the disability was detected for the first time in the year 2015 after more than 23 years of Air Force service. The disability of the applicant must be presumed to have arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by service. There is neither any note in the service record of the applicant at the time of his entry in the service nor has any reason been recorded by the Release Medical Board, hence this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The initial presumption that the applicant was physically fit and free from any disease and in sound physical and mental condition at the time of entering into service thus remains unrebutted. Noise is one of the agent for aggravation for such type of disability. Hon'ble Apex Court in such cases has considered each and every issue like contacting disease in peace area and close time association with stress and strain and has rejected the reasons of NANA given by the Medical Board. 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 military service.

11. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

12. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order rejecting claim for grant of disability element is set aside. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 15% -19% deemed to be 20% for life, which shall stand rounded off to 50% from the date of discharge. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

13. No order as to costs.

14. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 23 July, 2021

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