

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 194 of 2019****Thursday, this the 7th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Sujeet Kumar, Service No. 911621-G, Rank- Ex-Corporal, Son of Deena Nath Prasad, resident of AM 32T/F, Air Force station Agra, U.P.

.... Applicant

Ld. Counsel for the: **Shri Rishabh Tripathi**, Advocate.
Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence Nirman Bhawan, New Delhi-110001.
2. Chief of Air Staff, Air Headquarter, Vayu Bhawan Nirman Bhawan, New Delhi-110001.
3. Air Force Commanding, Air Force Record Office, Subroto Park, New Delhi-110001.
4. Director, Directorate Air Veteran, Subroto Park, New Delhi-110001.

... Respondents

Ld. Counsel for the: **Shri Rajiv Pandey**, Advocate
Respondents.

ORDER (Oral)

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

(a) Issue/Pass order or direction of appropriate nature to the opposite parties to provide the disability pension to the applicant from the date of discharge from the service dated 08.09.2017.

(b) Issue an order or direction to the respondents to pass appropriate order on the legal notice given by the applicant through the counsel.

(c) Any other order or direction which this Hon'ble Tribunal finds fit and proper under the circumstances of the case may be awarded in the favour of the applicant.

(d) Allow this application with cost.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on. 27.12.2006 and prior to completion of terms of engagement he was discharged from service on 08.09.2017 at his own request in low medical category. He was made to undergo Release Medical Board (RMB) in which he was found to be suffering from '**BRONCHIAL ASTHMA**' @ 20% for life aggravated by Air Force Services. When disability pension was not granted to applicant, a legal notice was served by the applicant in the month of September 2018 which seems to have been given no heed. It is in this perspective that this O.A. has been filed.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Indian Air Force in medically and physically fit condition and there was no note in his service documents with regard to suffering from any

disease prior to enrolment. He further submitted that RMB conducted on 07.09.2017 has opined applicant's disability as aggravated by Air Force service. Ld. Counsel for the applicant further submitted that disability, he feels, is due to stress and strain related to rigors of Air Force service as opined by RMB. He concluded by pleading for grant of disability element to applicant.

4. On the other hand, Ld. Counsel for the respondents conceded in Para 3 of counter affidavit that since applicant's disability has been accepted by the RMB as aggravated by military service, he is entitled to disability element w.e.f. 09.09.2017. Further submission of learned counsel for the respondents is that since applicant was discharged from service under his own request, he is not entitled to disability element in terms of para 153 of Pension Regulations for the Air Force, 1961 (Part-I) which envisages that disability element is applicable to those personnel who have been invalided out of service being in low medical category where sheltered appointment is not available. Learned counsel for the respondent further submitted in Para 13 of counter affidavit that although applicant is entitled to disability element but he is not entitled to service element disability pension, as he not rendered 15 years qualifying service to earn service element of pension of pension.

5. Heard Ld. Counsel for the parties and perused the material placed on record.

6. We have gone through the RMB which has held applicant's disability @ 20% for life aggravated by military service. The same has also been conceded by the respondents vide para 3 of the counter

affidavit. Therefore, applicant seems to be entitled to disability element @ 20% for life.

8. Further, it has been held by the Hon'ble Delhi High Court in CWP No 2667 of 1989 decided on 05.05.2004 titled Mahavivr Singh Narwal vs Union of India & Ors, that any person who was released at own request in low medical category was deemed to be 'invalided' for the purpose of disability pension as provided by Rule 4 of the Entitlement Rules, 1982. Since in the case in hand applicant was discharged from service at his own request, he will be deemed to be invalided out of service w.e.f. 08.09.2017.

9. In view of the above applicant is held entitled to 20% disability element for life with effect from his date of discharge i.e. 08.09.2017.

10. As a result of foregoing, the O.A. is **allowed**. The disability of the applicant is considered as aggravated by military service as has been held by the RMB dated 07.09.2017 and conceded vide Para 3 of the counter affidavit filed by the respondents. Further, the disability is rounded off from 20% to 50% in terms of ***Union of India and Ors vs. Ram Avtar & ors***, Civil Appeal No 418 of 2012 decided on 10th December 2014). Respondents are directed to pay disability element @ 20% rounded off to 50% for life w.e.f. his date of discharge within three months from today.

11. Default will invite interest @ 8% p.a.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :07 July 2021
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