

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 228 of 2020****Tuesday, this the 30th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 743493-K Sgt Sanjay Singh, S/o Shri Kapil Deo Singh, R/o: H No. 58A/2 Shakuntla Kunj, PO-Begum Sarai (Doomanganj), Dist- Prayagraj (UP)-211011.

.... Applicant

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

Versus

1. Union of India, through Secretary, MoD (IAF), South Block, New Delhi-110066.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi-110011.
3. Dte of Air Veteran, AFRO Building 3rd Floor, Subroto Park, New Delhi-110010.
4. PCDA (P), (Air Force), Draupadi Ghat, Allahabd (UP)-212114.

... Respondents

Ld. Counsel for the: **Shri Yogesh Kesarwani**, Advocate
Respondents. Govt Standing Counsel

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) *to quash and set aside the Respondent No 3 letter No Air HQ/997981/1/743493/10/19/DAV /RMB) dated 30.09.2019.*

(b) *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the date of his retirement from service (01.11.2019) and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.*

(c) *to grant the benefit of rounding of the disability pension from 20% to 50% to the applicant from the date his retirement from service (01.11.2019), in terms of Govt of India letter dated 31.01.2001, and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.*

(d) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 18.10.1999. He was discharged from service on 31.10.2019 at his own request in low medical category '**A4F4 (P)**'. Release Medical Board (RMB) held on 07.12.2018 found him to be suffering from "**ACL TEAR WITH MEDIAL MENISCUS TEAR (RT) (OPTD) (OLD) S 83.2**" @ 20% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 30.09.2019 on the ground that the disability from which applicant is suffering is NANA. While rejecting disability pension claim applicant was advised to prefer first appeal to Appellate Authority within six months, if he is not satisfied with the decision of the competent authority. Thereafter, applicant preferred first appeal which has not been decided as yet. It is in this perspective that this O.A. has been filed for grant of disability pension.

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/disability prior to enrolment. He further submitted that though RMB conducted on 07.12.2018 has opined applicant's disability as NANA but after pronouncement of judgment in respect of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213, applicant is entitled to disability pension. Ld. Counsel for the applicant further submitted that the aforementioned disability has caused to applicant while playing collective volley ball game in unit area on active service, therefore, this injury/disability should be either attributable to or aggravated by military service. He concluded by pleading for grant of disability pension to applicant.

4. On the other hand, Ld. Counsel for the respondents submitted in para 8 of Counter Affidavit that since applicant's disability has been declared by the RMB as neither attributable to nor aggravated by military service, therefore, his disability element of pension claim has rightly been denied by the respondents on the ground of disability being (NANA). Further submission of Ld. Counsel for the respondents is that the primary condition for grant of disability pension is that the disability should be attributable to or aggravated by military service with degree of disablement at 20% or over as per para 153 of Pension Regulations for Indian Air Force, 1961 (Part-I). Since applicant's disability in this case is neither attributable to nor aggravated by military service, therefore he is not entitled to disability pension. He pleaded for dismissal of O.A.

5. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. 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)."

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing a cryptic sentence in the proceedings i.e. 'neither attributable to nor aggravated by military service'. The injury sustained by applicant while taking active part in an organised unit game is to be treated as injury on duty as defined under clause 'duty' in Entitlement Rules for Pensionary Awards, which for convenience sake is reproduced as under:-

"For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated on 'duty' during the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of travelling in relation thereto".

8. We feel that such an obscure word (i.e. neither attributable to nor aggravated by military service) endorsed in the RMB does not make it

clear as to why the disability in question has no relation with attributability/aggravation factor when it is clear that applicant was injured while playing volley ball game in unit area while on active service. It is trite law that any disability not recorded at the time of enrolment must be presumed to have been caused subsequently, and, unless proved to the contrary to be a consequences of military service. The benefit of doubt, therefore, shall be rightly extended in favour of the applicant. In the instant case, since the applicant was found to be suffering from disability when he had put in more than 9 years of service, it should be deemed to be aggravated by military service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service.

9. In view of the above the applicant is held entitled to 20% disability element for life which shall stand rounded off to 50% disability element for life from the date of his discharge in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order dated 30.09.2019 (Annexure No A-1 to O.A.) is set aside. The disability of applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is extended from the date of discharge. The respondents are directed to complete the entire exercise within four months from today and pay disability pension

to applicant alongwith arrears with effect from the date of discharge.

Default will invite interest @ 8% p.a.

11. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :30th July 2021
rspal/*