

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 365 of 2020****Tuesday, this the 13th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 7514457-S, Ex Sgt Dinesh Kumar Singh Bisht, son of Late Sri Jabar Singh Bisht, resident of House No. 93, Saket Colony (Near Rewati Nursing Home), Ajabpur Kalan, Dehradun (Uttarakhand) PIN-248001.

.... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, Soth Block, New Delhi-110011.
2. Chief of Air Headquarter, New Delhi-110011.
3. Directorate of Air Veteran, Air Headquarter, Subroto Park, New Delhi-110010.
4. Directorate-III (DP), Directorate of Air Veteran, Air Headquarter, Subroto Park, New Delhi-110010.
5. Jt CDA, AF, Subroto Park, New Delhi PIN-110010.

... 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) To pass an order or direction for quashing of order dated 25.02.2014 which is annexed as Annexure No. 1 to the original application.

(b) To pass an order or direction commanding the respondent to grant the benefits disability pension to the applicant from the date of discharge i.e. 22.04.2013 along with interest @ 18% per annum till the actual realization of aforesaid amount.

(c) To pass an order or direction for commanding the respondent to grant the benefit of rounding of the disability pension up to tune of 75% in terms of Govt. Of India letter dated 31.01.2001 and various Judgments of Apex Court as well as This Hon'ble Tribunal.

(d) Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

(e) Allow the Original 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 03.05.1994. He was discharge from service on 22.04.2013 at his own request in low medical category '**A4F3 (P)**'. Release Medical Board (RMB) held on 06.04.2014 found him to be suffering from (i) **"SHAFT FEMURE (Rt) WITH IMPLANT FAILURE (OPTD)"** @ 20% for life long (ii) **"NECK PF FEMURE (RT) (OPTD) 20%** (iii) **"PATELLA (RT) (OPTD)"** for lifelong (iv) **"TIBIA (Rt) (OPTD)"** @ 20% for lifelong (v) **"GALLEAZZI DISLOCATION (Lt) (optd) @ 20%** for lifelong (Composite assessment

for all disabilities @ 60% for life). These disabilities have been declared as neither attributable to nor aggravated (NANA) by Air Force Services. Disability pension claim was rejected vide order dated 25.02.2014 on the ground that the disabilities from which applicant is suffering are NANA. While rejecting disability pension claim. It was advised to prefer first appeal to Appellate Authority within six months if he 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 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 06.01.2014 has opined applicant's disabilities 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 disabilities are a result of accident while on active service, therefore, these 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 3 of Counter Affidavit that since applicant's disabilities have been declared by the RMB as neither attributable to nor aggravated by military

service, therefore, he is not entitled to disability pension w.e.f. 22.04.2013.

5. The respondents submitted that the applicant suffered injury initially **GALLEAZZI DISLOCATION (LT) (OPTD)** on 07.05.2005 on account of a motor cycle accident when he was on military duty. Further the applicant met with another accident on 09.12.2010 when he was on leave at Dehradun when he was hit by a loader on his right leg and sustained injuries viz:-

- (a) SHAFT FEMURE (RT) WITH IMPLANT FAILURE (OPTD).
- (b) NECK PF FEMURE (RT) (OPTD).
- (c) ATELLA (RT) (OPTD).
- (d) TIBIA (Rt) (OPTD).

6. Further the Ld. Counsel for the respondents submitted that the applicant was discharged from Air Force service on 22.04.2004 at his own request after 18 years and 255 days of service.

7. In the instant case though composite assessment of all disabilities is assessed @ 60% for life but this is neither attributable to nor aggravated by military service, which does not fulfil criteria for grant of disability pension. He further submitted that since the Air Veteran is not entitled to disability element of pension, therefore, the question of its rounding off does not arise. He pleaded the O.A. to be dismissed.

8. Heard learned 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. – are all the disabilities of applicant attributable to or aggravated by military service?

9. 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 joint provisions of the Pensions Regulations and Entitlement Rules and the General Rules of Guidance to Medical Officers on military pensions and observed 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. In view of the settled position of law on attributability/aggravation, we find that the RMB has conceded the disability (i) **“SHAFT FEMURE (Rt) WITH IMPLANT FAILURE (OPTD)”** @ 20% for long life (ii) **“ NECK PF FEMURE (RT) (OPTD)”** 20% for long life (iii) **“PATELLA (RT) (OPTD)”** @ 20% for long life (iv) **“TIBIA (Rt) (OPTD)”** @ 20% for long life (v) **“GALLEAZZI DISLOCATION (Lt) (optd)** @ 20% for long life as neither attributable to nor aggravated by military service (composite assessment for all disabilities @ 60% for long life). It is trite law that 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 consequences of military service. The benefit of doubt, therefore, must go favour of the applicant. In the instant case we see that the applicant was found to be suffering from the first disability when he had put in more than 11 years of service, and the remaining disabilities after 16 ½ years of service and that are disabilities were assessed as neither attributable to nor aggravated by military service, which is not entirely correct.

11. We observe that while disabilities (i) to (iv) have no causal connection with military service, since all these disabilities occurred due to an accident when performing a task having no casual connection with his duty as he was on leave at that time and therefore, the applicant's aforesaid disabilities are NANA and he is not entitled to disability element in respect of aforementioned disabilities. However disability no (v) i.e. 'GALLEAZZI DISLOCATION (LT) OPTD' was caused while applicant was on military duty and therefore, this disability seems to be attributable to military service.

12. 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 'GALLEAZZI DISLOCATION (LT) OPTD' of the applicant should be considered as attributable to military service.

13. Further, with regard to admissibility of disability element on premature discharge from service, 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 released at own request in low

medical category should be deemed to be released on medical ground, if in low medical category, 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 in low medical category, he will be deemed to be invalided out of service w.e.f. 22.04.2013.

14. In view of the above, applicant is held entitled to 20% disability element of pension for disability 'GALLEAZZI DISLOCATION (LT) OPTD' which is attributable to military service and the said disability element is rounded off to 50% in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). But due to law of limitations as held in the Hon'ble Apex Court judgment in the case of **Shiv Dass vs Union of India & Ors**, reported in 2007 (3) SLR 445, applicant is entitled to arrears of rounding off of disability element three years prior to filing of this O.A. This O.A. was filed on 31.07.2019.

15. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The respondents are directed to pay 50% disability element alongwith arrears within four months from today.

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

17. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :13th July 2021
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