

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 364 of 2020**Thursday, this the 22nd day of July, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No 645319-N, Ex MWO, Brij Bhushan, son of Patroo Prasad, Resident of Village – Tighara, Post Office – Gajapur, Police Station- Madhuban, District- Mau (U.P.) PIN- 221601.

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

Versus

1. The Union of India, through Secretary, Ministry of Defence, (IAF), South Block, New Delhi-110011.
2. The Chief of Air Staff, Air Headquarters, New Delhi PIN - 110011.
3. Air Force Record Office, Subroto Park, New Delhi-110010.
4. Appellate Committee on First Appeal DDPA-III, Air Headquarters, (Vayu Bhawan), New Delhi - 110106.
5. Joint CDA, AF, Subroto Park, New Delhi, PIN- 110010.

.....RespondentsLd. Counsel for the : **Dr. Chet Narain Singh,**
Respondents. **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). To pass an order or direction for quashing of impugned order dated 29.06.2012 which is annexed as Annexure No 1 to the original application.*
- (II). To pass an order or direction commanding the respondent to grant the benefits disability pension to the applicant from the next date of discharge i.e. 01.01.2013 along with interest @ 12% per annum till the actual realization of aforesaid amount.*
- (III). To pass an order or direction commanding the respondent to grant the benefits of rounding of the disability pension up to tune of 50% in term of Govt. of India letter dated 31.01.2001 and various judgment of Apex Court as well as this Hon’ble Tribunal.*
- ((IV). 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.*
- (V). Allow the Original Application with cost.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 18.05.1974 and was discharged on 31.12.2012 (AN) in Low Medical Category A4G2 (Permanent) on fulfilling the terms of engagement. At the time of retirement from

service, the Release Medical Board (RMB) held on 16.02.2012 at 401 AF Station, assessed his disabilities (i) '**CVA (LACUNAR INFRACT SNDROME)** @ 15-19% for life and (II) '**PRIMARY HYPERTENSION**' @ 30% for life composite disability 40% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant is getting service pension for the services rendered in Air Force. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 29.06.2012. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant 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 in Indian Air Force. The diseases of the applicant were contacted during the service, hence they are 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 applicant be granted disability pension as well as arrears and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered composite disabilities to the extent of 40% for life, but submitted that competent authority while rejecting the claim

of the applicant has viewed that disabilities are found as neither attributable to nor aggravated (NANA) by Air Force service. As per Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I), the primary conditions for the grant of disability pension are “Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of disability which is attributable to or aggravated by Air Force service and assessed at 20% or over.” Since the disability of the applicant was considered as NANA, hence claim of the applicant for the grant of disability pension has correctly been rejected.

5. Heard learned counsel for the parties and perused the documents available on record.

6. The question before us for consideration is simple and straight whether disabilities of applicant are attributable to or aggravated by Air Force service and 40% disability can be rounded off to 50% or not?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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)."

8. Thus, considering all issues we have noted that the only reason given by RMB for denying Attributability for diseases are that it started in a peace area. We are not convinced by this logic that stress & strain of Air Force life is only in Fd/HAA/CI areas and there is no such stress in peace areas. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court

decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the composite disabilities 40% for life as aggravated by Air Force service.

9. 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 also.

10. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered view that benefit of rounding off of disability pension @ 40% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

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

13. Accordingly O.A. is **allowed**. The impugned order rejecting the claim for grant of disability pension passed by the respondents is set aside. The disabilities assessed as 40% for life are to be considered as aggravated by Air Force service. The applicant is already in receipt of service element hence the applicant is entitled to get disability element @ 40% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing this Original Application. The date of filing this Original Application is 14.10.2020. The respondents are 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. Default will invite interest @ 8% per annum till actual payment.

14. No order as to costs.

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

Dated : 22 January, 2021

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