

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Review Application No. 18 of 2020
(Inre O.A. No. 232 of 2019)**Thursday, this the 15th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 773840-G Sgt Amit Bajpai (Retd), S/O Sri Rajkumar Bajpai,
R/O H.No. 249, Z-1, Hemant Vihar, Barra-2, Kanpur-208027
(U.P.).**.... Applicant**Ld. Counsel for the: **Shri Pankaj Kumar Shukla**, Advocate.
Review Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi-110106.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Jt CDA (AF), C/O 56 APO, Subroto Park, New Delhi-110010.
5. PCDA (P) (Air Force), Draupadi Ghat, Allahabad-211014.
(UP).

... RespondentsLd. Counsel for the: **Shri Shyam Singh**, Advocate
Respondents. Central Govt Counsel.

ORDER (Oral)

1. Heard learned counsel for the parties and perused the record.
2. This Review Application has been filed under Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008 for review of the judgment and order dated 08.12.2020 passed by this Tribunal in O.A. No. 232 of 2019. The operative portion of the said order is as under:-

“13. We have considered the applicant’s case in view of above guiding factors and we find that, though, applicant was on duty when slipped at home and sustained injury resulting into disabilities of permanent nature to the extent of 60%, on account of (i) “FRACTURE SHAFT OF FEMUR (R) OPTD WITH ACL DEFICIT (OLD) S72.3 Z09.0” (ii) “FACTURE PATELLA RT (OPTD) S 82.0 Z 09.0” and (iii) “Diabetes Mellitus Type-II”, the activity in which he sustained injury being not connected with his Air Force duties in any manner, he is not entitled to the disability pension for the same. We also find that rulings relied upon by the applicant being either based on different facts or overruled are of no help to him.

14. In the result, we hold that the claim of applicant’s disability pension has rightly been rejected

by the respondents which needs no interference.

Resultantly, O.A. is dismissed.”

3. Submission of learned counsel for the applicant is that while dismissing O.A. No. 232 of 2019 on 08.12.2020 applicant's first two disabilities were considered but his third disability i.e. 'Diabetes Mellitus Type-II' (Old) @ 20% for life was given no heed. Further submission of learned counsel for the applicant is that since applicant's aforesaid disability arose during service, therefore, he is entitled for grant of disability element including benefit of rounding off from 20% to 50%. In support of his claim, applicant's learned counsel has placed reliance on the cases of Hon'ble Apex Court judgment of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316, Hon'ble AFT Kochi Bench judgment delivered in O.A. No. 184 of 2015, titled ***Babu Abraham Raj Vs Union of India & Ors***, Hon'ble AFT Guwahati Bench judgment delivered in O.A. No. 31 of 2014, titled ***Ex-Hav Jhunnu Kumar Das vs Union of India & Ors***, Hon'ble AFT Chennai Bench judgment delivered in O.A. No. 134 of 2016, titled ***Ex-Lnk Kothapalli Nagaiah vs Union of India & Ors***.

4. During the course of hearing, learned counsel for the respondents has admitted that case laws cited by learned counsel for the applicant are genuine and applicant seems to be entitled to disability element. Though initially he tried to justify the aforesaid order of the Tribunal, but could not place any case law in support of his submission.

5. The O.A. was decided by this Tribunal vide order dated 08.12.2020. While dismissing the O.A., applicant's first two disabilities which have no causal connection with military service were taken into consideration but his third disability with respect to 'Diabetes Mellitus Type-II' was not considered while delivering the judgment.

6. We feel it appropriate to consider applicant's third disability i.e. 'Diabetes Mellitus Type-II' which is NANA. Considering that the Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 213 has held that if an incumbent is enrolled in sound physical health, there is no note with regard to his ill health in his medical history sheet at the time of enrolment and a disease/disability occurs while in service, it must be presumed due to service conditions.

7. With the aforesaid discussion applicant's disability 'Diabetes Mellitus Type-II' is regarded as aggravated by military service and he is entitled to disability element.

8. In view of the above, 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 but the arrears shall be restricted to three years prior to filing of present O.A. This O.A. was filed on 08.01.2019.

9. Accordingly, this Review Application deserves to be allowed, hence **allowed**. The order under review is modified to the extent that the applicant shall be entitled to disability element for

disability 'Diabetes Mellitus Type-II' @ 20% for life rounded off to 50% for life w.e.f. 08.01.2016.

10. Respondents are directed to grant 50% disability element along with arrears to applicant within four months from today.

Default will invite interest @ 8% p.a.

11. No order as to costs.

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

13. This order shall form part of the judgment and order under review.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 15th July, 2021
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(Justice Umesh Chandra Srivastava)
Member (J)