

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 759 of 2021**Tuesday, this the 12th day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 696939-R Ex JWO Prakash Chandra Shukla
S/o Late Shri Ram Briksha Shukla
R/o Bhathahi Bujurg (Shukul), PO – Bhathahi Khurd,
Teh – Fazil Nagar, Distt - Kushinagar – 274401 (UP).... **Applicant**Ld. Counsel for the Applicant : **Shri P.K. Shukla**, Advocate

Versus

1. Union of India, Through Secretary, Ministry of Defence (Air Force), South Block, New Delhi-110011.
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010.
4. Jt CDA (AF), C/o AFCAO, Subroto Park, New Delhi – 110010.
5. PCDA (P) (Air Force), Draupadighat, Allahabad – 211014 (UP).

... **Respondents**Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,
Central Govt Counsel**ORDER**

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 or set aside the respondents letter dated 23.03.2006 (Annexure A-1 of OA).

(B) To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.12.2005 (Date of discharge: 30.11.2005) with all consequential benefits including rounding of benefit from 15-19% to 50% in terms of Govt. of India letter dated 31 Jan 2001 and judgment passed by Hon'ble Apex Court in case of Ram Avtar vs. UOI & Others.

(C) To issue order or directions to the respondents to conduct Re-survey Medical Board for the re-assessment of disability of the applicant, as his condition is being deteriorated day by day.

(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 05.11.1985 and was discharged from service on 30.11.2005 in low medical category BEE (Permanent) on fulfilling the condition of his enrolment after rendering more than 20 years of service. The Release Medical Board (RMB) assessed his disability “**LUMBAR SPONDYLOSIS WITH DEGENERATIVE DISC L2-3, L4-5, L5-S1**” @ 19% for life and considered it as aggravated by military service. The disability pension claim of the applicant was rejected vide order dated 23.03.2006. First appeal of the applicant dated 23.10.2006 was rejected by the competent authority vide order

dated 21.07.2008. It is in this perspective that applicant has filed this O.A.

3. Learned 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 joining, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension as per Pension Regulations. The applicant suffered disability "**LUMBAR SPONDYLOSIS WITH DEGENERATIVE DISC**" in the year 2002. The RMB assessed his disability @ 19% for life (below 20%) though it was aggravated by Air Force service. However, as per Para 32 of Chapter VII of Guide to Medical Officers, 2002, the said disability cannot be assessed less than 20%. Therefore, applicant deserves for 20% disability pension to be rounded off to 50% in view of the Hon'ble Apex Court judgment in Ram Avtar case.

4. Learned counsel for the applicant further submitted that applicant was instructed to appear before Appeal Medical Board at BHDC but due to long waiting of six months in hospitalization, applicant came back without undergoing Appeal Medical Board. He placed reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No. 4949/2013 **Dharamvir Singh v. Union of India** decided on 02.07.2013 and Civil Appeal No. 5605 of 2011,

Sukhvinder Singh vs Union of India, decided on 25.06.2014 and pleaded to grant disability pension to the applicant @ 20% in terms of Para 32 of Chapter VII of Guide to Medical Officers, 2002 duly rounded off to 50% for life.

5. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of his disability is below 20% and applicant has been discharged from service in low medical category BEE (Permanent) on fulfilling the condition of his enrolment after rendering more than 20 years of service, therefore, condition for grant of disability element of pension does not fulfil in terms of para 153 of Pension Regulations for the Air Force, 1961 (Part-1) and therefore, the competent authority has rightly denied the benefit of disability element of pension to the applicant. He pleaded for dismissal of O.A.

6. We have given our considerable thoughts to both sides and have carefully perused the records. The question in front of us is straight; whether the disability is above or below 20%?

7. We have noted that the applicant's disability has been assessed less than 20%. In this regard, after examination of the various provisions of Guide to Medical Officers, 2008, amended Chapters VI & VII, we find that firstly, Low Back Ache has been defined in para 51 of Chapter VI where causes of Low Back Ache have been very clearly mentioned and Lumbar Spondylosis is one of the causes of Low Back Ache. In Para 33 of Chapter VII of

Guide to Medical Officers, percentage disability for Low Back Ache has been shown as 20%. This means that Guide to Medical Officers has very clearly defined Low Back Ache and Lumbar Spondylosis is one of the causes of Low Back Ache and that percentage disability of any Low Back Ache should be assessed not less than 20%. Therefore, in the instant case we come to the conclusion that there should have been no reason for the Release Medical Board to have assessed his disability Lumbar Spondylosis @ 19% which is in contravention to the laid down principles of Guide to Medical Officers, 2008.

8. In view of above, disability of the applicant "LUMBAR SPONDYLOSIS WITH DEGENERATIVE DISC", assessed @ 19% by the RMB cannot be assessed less than 20% as per Chapter VI & VII of Guide to Medical Officers, 2008. Therefore, applicant deserves for 20% disability element for his disability Lumbar Spondylosis which is to be rounded off to 50% in view of the Hon'ble Apex Court judgment in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order passed by the respondent is set aside. The applicant is entitled to disability element @ 20% for life duly rounded off to 50% for life from the next date of discharge from service. The respondents are directed to grant disability element @ 50% to the applicant from the next date of discharge from service. However, due to law of limitations

settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 22.11.2021. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum from the date of this order till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: July, 2022
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