

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 28 of 2023**Thursday, this the 20th day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

933265-T, Cpl. Kamal Dixit, S/o Shri Lalji Prasad Dixit, R/o House No. 384, F Block House, Barra No.8, Kanpur Nagar, (UP) -208027.

..... ApplicantLd. Counsel for the Applicant : **Shri Ravi Kumar Yadav**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence (IAF), South Block, New Delhi -110066.
2. Chief of Air Staff, Air Hqrs, Vayu Bhawan, New Delhi -110011.
3. Director III (DP), DAV, Air Hqrs, Subroto Park, New Delhi - 110010.
4. PCDA (P), (Air Force), Draupadi Ghat, Allahabad (UP)-212114.

.....RespondentsLd. Counsel for the Respondents. : **Shri Rajiv Pandey**, Advocate
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 :-

- A. *To quash and set aside the Respondent No. 3 letter No. Air HQ/99798/2/933265/DAV/DP/IMB dated 05 May 2022 (annexure A-1 of Instant OA & Impugned Order).*

- B. *To issue /pass an order or directions of appropriate nature to the respondents to grant disability element @100% to the applicant from the date of his retirement from service (07.04.2022) and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.*
- C. *To grant the Constant Attendant Allowances in terms of Regulation 166 of Pension Regulations for the Air Force 1961 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 this Hon'ble Tribunal be awarded in favour of the application.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 01.07.2009 and invalided out from service on 06.04.2022 in Low Medical Category on having been found medically unfit for further service in Indian Air Force after rendering 12 years and 280 days of service. At the time of discharge from service, the Invaliding Medical Board (IMB) held at Command Hospital (Central Command), Lucknow on 12.02.2022 assessed his disability '**CHRONIC KIDNEY DISEASE STAGE 5-OBSTRUCTIVE NEPHROPATHY, CONGENITAL PUJ OBSTRUCTION (ICD N14.0, Z09.0)**' @ 100% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 05.05.2022. The applicant preferred First Appeal dated 27.06.2022 but of no avail. 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 Air Force. The disease of the applicant was contracted during the service, hence it is 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 @100% along with Constant Attendance Allowance.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 100% for life has been regarded as NANA by the IMB, as per Regulation 153 of Pension Regulations for the IAF, 1961 (Part – I) the applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases

316. 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, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**CHRONIC KIDNEY DISEASE STAGE 5-OBSTRUCTIVE NEPHROPATHY, CONGENITAL PUJ OBSTRUCTION (ICD N14.0, Z09.0)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in July 2016 while posted in Peace location (Amla), therefore, applicant is not entitled to disability element of pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Air Force training and associated stress and strain of Air Force service. The applicant was enrolled in Indian Air Force on 01.07.2009 and the disability has started after more than 6 years of Air Force service i.e. in July 2016 and he was invalided out from on 06.04.2022. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the applicant should be considered as aggravated by Air Force service.

8. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018, we are of the considered view that disability element of disability pension @ 100% for life may be extended to the applicant from the next date of his discharge.

10. We also observe that applicant was 100% disabled as recommended by the IMB that his disability is assessed @ 100% + CAA for life. Therefore, the applicant shall also be granted Constant Attendance Allowance (CAA) in addition to disability element of pension in accordance with the rules/instructions issued by the Govt. from time to time. As per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, Govt. of India, Ministry of Defence letter No. 1(2) 2013-D (Pen/Pol) dated 27.04.2015

and PCDA (P) Allahabad Circular No. 543 dated 27.05.2015, applicant is entitled to Constant Attendance Allowance also.

11. In view of the above, the **Original Application No. 28 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension and Constant Attendance Allowance, is set aside. The disability of the applicant is held as aggravated by Air Force Service. The applicant is entitled to get disability element @100% for life + Constant Attendance Allowance from the date of invalidment from service. The respondents are directed to grant disability element to the applicant @100% for life + Constant Attendance Allowance from the date of invalidment from service. The respondents are further 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 the actual payment

12. No order as to costs.

13. Ld. Counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 20 July, 2023

AKD/Ashok/-