

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 516 of 2022****Tuesday, this the 11th day of July, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

No. 606852 Ex JWO Bagish Kumar Bajpai
 S/o Late Shri Mathily Sharan Bajpai
 R/o H. No. 46A, Tulsinagar, Near 37 New PAC Line,
 PO – 37 New PAC Line, District – Kanpur (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Ramakant Gupta**, Advocate
Shri Shiv Narain Kaushal, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Air Staff, Air HQ (Vayu Bhawan), Rafi Marg, New Delhi.
3. Principal Director, Directorate of Air Veteran, Subroto Park, New Delhi – 110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi-110010.

..... Respondents

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

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 for the following reliefs:-

“(a) To direct the respondents to consider the benefits of disability pension from the date prior to three years from the date filing of OA No. 553 of 2019 to the applicant.

- (b) To direct the respondent No. 3 to consider the pending representations dated 14/02/2022 & 29/03/2022 for benefits of disability pension from the date prior to three years from the date filing of OA No. 553 of 2019 to the applicant in light of the judgment of the **Shiv Dass vs. Union of India & Ors.**
- (c) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 11.04.1969 and was discharged from service on 30.04.1995 in low medical category due to disability “ESSENTIAL HYPERTENSION”. His claim for grant of disability element @ 30% for two years was rejected by the respondents being disability considered as neither attributable to nor aggravated by military service. Being aggrieved, the applicant had filed O.A. No. 553 of 2019 before this Tribunal for grant of disability element @ 30% for two years which was allowed with direction to the respondents to grant 30% disability element for two years and to conduct RSMB of the applicant for re-assessing the present medical condition. The applicant was granted disability element from 01.05.1995 to 30.04.1997 @ 30%. The RSMB of the applicant was conducted on 27.02.2021 at AFH, Kanpur and assessed his disability @ 30% for life. Accordingly, applicant has been granted 30% disability element duly rounded off to 50% for life from the date of holding RSMB, i.e. w.e.f. 27.02.2021. Now the applicant has filed second O.A. for grant of 30% disability element duly rounded off to 50% for life from three years prior to filing of first

O.A. No. 553 of 2019 in light of the judgment passed by the Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India and Others**, reported in 2007 (3) SLR 445. The applicant submitted representations dated 14.02.2022 and 29.03.2022 for granting disability element of pension from three years prior to date of filing of OA No. 553 of 2019 which is still pending with the respondents. Being aggrieved, the applicant has filed the present (Second) Original Application for grant of disability element from three years prior to filing of first OA No. 553 of 2019.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 11.04.1969 and was discharged from service on 30.04.1995 in low medical category due to disability "**ESSENTIAL HYPERTENSION**". The claim for the applicant for grant of disability element @ 30% for two years was rejected by the respondents being disability considered as neither attributable to nor aggravated (NANA) by military service. Being aggrieved, the applicant had filed O.A. No. 553 of 2019 before this Tribunal for grant of disability element @ 30% for two years which was allowed with direction to the respondents to grant 30% disability element for two years from the date of discharge and to conduct RSMB of the applicant for re-assessing his present medical condition and future entitlement of disability element of pension, if any. The applicant has been paid disability element @ 30% from 01.05.1995 to 30.04.1997. The RSMB of the applicant was conducted on 27.02.2021 at AFH, Kanpur and assessed his disability, "**ESSENTIAL HYPERTENSION**"

@ 30% for life. The respondents have granted 30% disability element duly rounded off to 50% for life from the date of holding RSMB, i.e. w.e.f. 27.02.2021 vide PPO No. 08/14/B/DP/CORR/602/2021.

4. Learned Counsel for the applicant further submitted that applicant is entitled disability element of pension @ 50% for life from three years prior to filing of first O.A. No. 553 of 2019 in light of the judgment passed by the Hon'ble Apex Court in the case of **Shiv Dass vs. Union of India and Others**, reported in 2007 (3) SLR 445. In this regard, the applicant submitted two representations dated 14.02.2022 and 29.03.2022 for granting disability element of pension prior three years from the date of filing of OA No. 553 of 2019 which is still pending with the respondents. The action of the respondents in granting disability element from the date of RSMB is arbitrary and illegal in terms of judgment of the Hon'ble Apex Court. He pleaded for grant of disability element @ 50% for life from three years prior to filing of first OA No. 553 of 2019.

5. In reply, submission of learned counsel for the respondents is that applicant has been paid disability element of pension @ 30% for two years from the date of discharge as per order of the Tribunal passed in applicant's first OA No. 553 of 2019. As per direction of the court, RSMB of the applicant was conducted and applicant has been granted 50% disability element of pension for life from the date of holding of RSMB, i.e. 27.02.2021. Thus, submission of the applicant

that he should be given 50% disability element of pension from three years prior to date of filing of first OA No. 553 of 2019 is not justified.

6. Learned counsel for the respondents further submitted that due to redressal of applicant's grievance, the instant Original Application has become infructuous and needs no further action on the part of the respondents as the applicant has already been granted disability element of pension @ 50% for life as per PPO issued to him. He pleaded for dismissal of the O.A.

7. Heard learned counsel for the parties and perused the material placed on record.

8. We observe that applicant has been granted 30% disability element of pension, rounded off to 50% for two years from the date of discharge as per this Tribunal's order dated 02.12.2020 passed in applicant's first OA No. 553 of 2019. The Re-Survey Medical Board of the applicant has assessed the disability of the applicant @ 30% for life and accordingly, PPO granting 50% disability element of pension for life w.e.f. 27.02.2021 has been issued.

9. We find that applicant was having disability, "ESSENTIAL HYPERTENSION" with same gravity, as assessed by the RSMB, during the intervening period, i.e. from the date of discharge till holding of RSMB in 2021. Since, applicant's prayer for grant of disability element of pension is from three years prior to date of filing of first OA No. 553 of 2019 and first OA has already been decided by which applicant has been paid 30% disability element for two years,

therefore, the prayer of the applicant to grant 30% disability element of pension to be rounded off to 50% for life from three years prior to date of filing of first OA No. 553 of 2019 in the present Original Application is not justified and it cannot be considered. However, we feel it proper to grant 30% disability element duly rounded off to 50% for life from three years prior to date of holding of RSMB.

10. As a result of foregoing discussion, the Original Application is **partly allowed**. The applicant is held entitled to disability element of pension @ 30% duly rounded off to 50% for life from three years prior to date of holding of RSMB, i.e. 27.02.2021. Since the applicant has already been granted 50% disability element w.e.f. 27.02.2021 as per PPO, the respondents are directed to grant disability element @ 50% for life for the intervening period from three years prior to date of holding of RSMB, i.e. 27.02.2021 and pay arrears of the intervening period from 27.02.2018 to 26.02.2021 accordingly. 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 till actual payment.

11. No order as to costs.

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

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 11th July, 2023

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