

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 122 of 2019

Tuesday, this the 26th day of March, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 775310-A Sgt Prabhat Kumar Giri (Retd) S/O Shri Moti Lal Giri, R/O Village-Mubarakpur, Post-Morhowrah, District-Saran (Chapra)-841418 (Bihar), presently R/O Gayatri Nagar, Gali No 17, Air Force Station, Izzatnagar, Bareilly-243029 (UP)

..... Applicant

Ld. Counsel : **Shri Ashish Kumar Singh**, Advocate.
for the 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 AFCAO, Subroto Park, New Delhi-110010.
5. PCDA (P) (Air Force), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Asheesh Agnihotri**,
Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) *To quash or set aside the Respondent No 3 letters dated 04 Sep 2017 & 26 May 2016 (Annexure A-1 & A-2 respectively of OA).*
- (ii) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.04.2016 (Date of discharge : 31.03.2016) with all consequential benefits including rounding off benefit from 40% 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.*
- (iii) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 07 months and 21 days. Since payment of pension involves recurring cause of action, as such, the delay was condoned vide order dated 27.02.2019.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 18.03.1996 and was discharged from service w.e.f. 31.03.2016 having rendered 20 years and 14 days of service. Prior to discharge, the RMB held on 24.06.2015, placed the applicant in low medical category ‘A4G3 (P)’ and assessed his disability “Alcohol Dependence Syndrome (Old) F. 10.2, Z. 09.0” @ 40% for life neither attributable to nor aggravated by military service (NANA). The

case for disability pension was rejected by the competent authority vide order dated 26.05.2016 and his first appeal against rejection of disability pension claim was also rejected vide order dated 04.09.2017. After rejection of first appeal, the applicant did not prefer second appeal and has filed the present O.A.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force (IAF) on 18.03.1996 and was discharged from service with effect from 31.03.2016 after rendering 20 years and 14 days of service. The Ld. Counsel for the applicant further submitted that since the applicant was enrolled in a medically fit condition, thereafter since he has been discharged in Low Medical Category (LMC) A4G3 (P), as such, his disability should be considered as attributable to military service. He concluded by pleading for grant of disability pension to the applicant.

5. On the other hand, the respondents have submitted that the applicant was suffering from Alcohol Dependence Syndrome due to excessive intake of alcohol due to his own will and loss of voluntary control. He pleaded that the disability is not related to military service, hence the disease of the applicant has been opined by the medical board as neither attributable to nor aggravated by military service. He further submitted that the applicant's claim for disability pension and

first appeal have correctly been rejected. He pleaded the O.A. to be dismissed.

6. We have heard Shri Ashish Kumar Singh, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents and perused the material placed on record. The only question before us is as to whether the disability of the applicant is attributable to or aggravated by military service.

7. We have given our anxious considerations to the submission of both the parties we have noticed that the applicant is in receipt of normal service pension after completion of his terms of engagement of 20 years service.

8. We have also perused the RMB proceedings thoroughly and noticed that para 5 (a) is relevant which reads as under:-

*“5(a) Was the disability attributable to individual’s own negligence or misconduct? -Yes
If yes, in what way? -Due to his excessive indulgence in substance abuse (alcohol)”*

9. Additionally, the denial of attributable/aggravation factor has also been explained by the RMB with the following remarks:-

‘Onset 07 May 14 while posted at peace station Bareilly. The disability is neither considered attributable nor aggravated due to military service as the disability is lifestyle related disorder due to his excessive indulgence in substance abuse (alcohol) which was within his own control. No close time association with stress/strain/HAA/CI Ops of military service.’

10. Military is a combatant force where only physically and mentally fit soldiers can discharge onerous duties to safeguard

our mother land. Military by tradition provides the opportunity to its soldiers to have alcoholic drinks however no military can afford to have alcoholics in its force. Thus it is for the individual soldier to exercise moderation and discipline and not turn into an alcoholic.

11. Thus in the facts and circumstances of the case, we are in agreement with the opinion of the RMB that the disability i.e. Alcoholic Dependence Syndrome suffered by the applicant is neither attributable to nor aggravated by military service.

12. In view of the above, the applicant has not been able to make out a case. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

No order as to cost.

**(Air Marshal BBP Sinha
Member (A))**

Dated: March, 2019

gsr

**(Justice SVS Rathore)
Member (J)**