

RESERVED
COURT NO.1

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

ORIGINAL APPLICATION NO. 227 OF 2019

Thursday, this the 28th day of March, 2019

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

Hon'ble Hon'ble Air Marshal B.B.P. Sinha, Member (A)

656986-B Ex-SGT Dev Nath Pandey,
S/o Ram Lalan Pandey,
Resident of Village Salahpur P.O. Parbhatpur,
Tehsil Gauriganj District Amethi.

.....Applicant

Ld. Counsel for :
the Applicant

Shri Dharam Raj Singh,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence (Air Force), New Delhi-110011.
2. The Chief of Air Staff, Air Headquarter, Vayu Bhawan,
New Delhi 110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi 110010.
4. Office of Joint CDA (Air Force), New Delhi,
C/o Air Force Central Accounts Office, Subroto Park,
New Delhi 110010.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Dr Shailendra Sharma Atal,
Ld. Counsel for the Respondents.

ORDER

Delivered by Hon'ble Mr.Justice SVS Rathore, (Member-J.)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. The applicant has made the following prayers:

“A. To issue/pass an order or directions to set aside the rejection orders dated 20.03.2014 and 19.08.2015 regarding the disability element of disability pension.

B. To issue/pass an order or directions to the respondents to grant the Disability element of Disability pension to the applicant.

C. To issue/pass an order or directions to the respondents to grant rounding off the disability element of disability pension to the applicant @40% to 50% alongwith 9% interest of the arrears from the date of discharge.

D. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

E. To allow this original application with costs.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was initially enrolled as Airman in Indian Air Force on 25.04.1985 and put the unblemished service record for more than 29 years. After completing the service tenure, the applicant was discharged on 30.04.2014 as a Sergeant. At the time of enrolment, the applicant was fully fit without having any disease. Before discharge, Release Medical Board was held on 06.02.2013 in which the applicant's disability were detected as **(1) CORONARY ARTERY DISEASE (ANTERIOR) WALL MYOCARDIAL INFARCATION) FRESG I 21.0 @ 30% for life and (2) DIABILITES MELLITUS TYPE-II (FRESH) E-II 20% for life and composite percentage of disability was assessed as 40% for Life. It is**

submitted that RMB opined that the said disease were neither attributable to nor aggravated by Air Force services. On 20.03.2014 the disability pension claim of the applicant was accordingly rejected by the Office of Joint CDA (Air Force), New Delhi, respondent no.4 stating that the disability is not attributable to Air Force services.

3. After rejection of the disability claim, the applicant preferred First Appeal on 18.04.2014. Since the said appeal has not been decided, the applicant filed M.A.No.149 of 2017 (O.A.No.Nil of 2017) before this Hon'ble Tribunal, wherein the Hon'ble Tribunal vide order dated 24.07.2017 directed the respondents to decide the pending appeal of the applicant within six months. The said appeal has been decided against the applicant on 19.08.2015 by the authority concerned and communicated to the applicant.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has been discharged from service in Low Medical Category, therefore, he is entitled for disability pension.

5. The respondents have not disputed that the applicant suffered two disabilities to the extent of 40% for Life, but submitted that the disability of **“(1) CORONARY ARTERY DISEASE (ANTERIOR) WALL MYOCARDIAL INFARCTION) FRESG I 21.0 and (2) DIABILITES MELLITUS TYPE-II (FRESH) E-II”** was considered as neither attributable to nor aggravated by Air Force services by Release Medical Board, as such, in terms of Para 153 of Pension Regulations for IAF 1961,

Part 1, his claim has correctly been rejected by the Office of Joint CDA (Air Force), New Delhi, respondent no.4.

6. We have heard the learned counsels for the parties and perused the records. We have specifically perused the RMB in great details and we find that the RMB has held both the disabilities of the applicant as NANA. Thus, the question before us is straight and simple i.e. is the disability of the applicant attributable to or aggravated by Air Force Services.

7. We have also noted that the applicant's First Appeal against the rejection of disability pension has been decided by the competent authority.

8. On careful scrutiny, we find that one of the disabilities i.e. **CORONARY ARTERY DISEASE (ANTERIOR) WALL MYOCARDIAL INFARCTION**) has been declared NANA primary due to 'Not being connected with service'. However, we feel that there are various conditions and factors of Military service which can aggravate the onset of coronary artery disease.

9. We also find that the reasons given in the RMB for holding this disease as NANA are cryptic and do not inspire confidence, therefore, in the interest of substantial justice, we would like to give benefit of doubt to the applicant in the light of the pronouncement of the Hon'ble Apex Court in the case of **Dharamvir Singh v. Union of India (2013) 7 SCC**. We, therefore, declare the disability **CORONARY ARTERY DISEASE (ANTERIOR) WALL MYOCARDIAL INFARCTION**) @30% for life as aggravated by Military service.

10. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar, Sukhvinder Singh vs. Union of India & Ors.***, reported in (2014) STPL (WEB) 468 SC and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

11. In view of the above the Original Application deserves to be allowed.

12. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The first disability i.e. **CORONARY ARTERY DISEASE (ANTERIOR) WALL MYOCARDIAL INFARCTION** @30% for life is considered as aggravated by Military service. The respondents are directed to grant disability element to the applicant @ 30% for life which would stand rounded off to 50% for life from three years prior to the filing of the present Original Application, i.e. 14.06.2018. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: March, 2019
PKG

(Justice SVS Rathore)
Member (J)