

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 477 of 2019

Wednesday, this the 17th day of March, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 621827-S Hony Fly Offr (HFO) Dinesh Chandra Chaturvedi (Retd), House NO 51/220-A, S/o Late Shri Ramakant Chaturvedi, Near Jhulai Lal Mandir, Sindhi Colony, West Arjun Nagar, Agra (UP) PIN – 282001.

.....Applicant

Ld. Counsel for : **Shri Keshav Sharma**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi 110011.
2. Chief of Air Staff, Air Headquarters, Vayu Bhavan, New Delhi - 110106.
3. The Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi - 110010.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(A) To issue/pass an order or directions to set aside/quash the orders dated 29.08.2014, 30.10.2015 and 17.05.2017.

(B) The Hon’ble Tribunal may be gracefully pleased to call for all the records pertaining to the passing of impugned order No. Air HQ/99798/5/2nd Appeal/243/621827/DP/AV-III dated 17 May 2017 on the file of Respondent No 3 and set aside the same consequently grant the disability elements of pension and the attendant benefits with broad banding benefits from 20% to 50% with 12% interest on arrears.

(C) To issue/pass any other orders/direction as this Hon’ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant.

(D) Allow this Application with cost.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Air Force on 15.11.1977 and was discharged from service on 30.11.2014 on completion of terms of engagement. At the time of discharge Release Medical Board held on 11.06.2014 assessed disabilities (a) **Cataract (BE) (Optd) (Old) H25.0Z.09.0 @ 20%** and (b) **Fracture Tibial Plateau @ 20%** for life composite disabilities

for both diseases @ 20% for life and considered as neither attributable to nor aggravated by the Air Force service. The applicant was granted service pension from the date of retirement. Claim of the applicant for the grant of disability element was rejected by the respondents vide letter dated 29.08.2014 being neither attributable to nor aggravated by Air Force service and not related to Air Force service. Applicant preferred first and second appeal for grant of disability element but the same were also rejected vide letter dated 30.10.2015 and 17.05.2017. Being aggrieved, the applicant has approached this Tribunal for the grant of disability element.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in the Air Force in medically fit condition and, thereafter, he has been retired from service in Low Medical Category with disabilities (a) **Cataract (BE) (Optd) (Old) H25.0Z.09.0 @ 20%** and (b) **Fracture Tibial Plateau @ 20%** for life and composite disabilities @ 20% for life. He pleaded for the disabilities of the applicant to be considered due to Air Force service and consider as attributable to and aggravated by Air Force service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability element in similar cases, as such, the applicant is also entitled to disability element and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered composite disabilities to the extent of 20% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disabilities qualifying for disability element have been assessed as NIL for life and found as neither attributable to nor aggravated by Air Force service and not connected with Air Force service, therefore, in terms of Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I), the claim of the applicant for the grant of disability element has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us for consideration is simple and straight whether disabilities of applicant are attributable to or aggravated by Air Force service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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)."

8. Thus, considering all issues we have noted that Release Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for Air Force service. In absence of any evidence on record to show that the applicant was suffering from disease at the time of acceptance of his service and the

fact that the applicant had put in over 25 years of service when for the first time the disease was detected in the year 2003, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to Air Force service. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by Air Force service.

9. On the issue of rounding off of disability element, 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** and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

10. It may also be observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, para-9, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. As observed in the preceding paragraphs, delay in filing the O.A. has been condoned by this Tribunal, as such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the O.A.

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

13. Accordingly O.A. is **allowed**. The impugned orders rejecting the claim for grant of disability element passed by the respondents are set aside. The disabilities assessed @ 20% for life is to be considered as aggravated by Air Force service. The respondents are directed to grant disability element to the applicant from three years prior to filing of Original Application @ 20% for life which would stand rounded off to 50% for life. Date of filing of O.A. is 01.03.2019. 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 @ 8% on the amount accrued from due date till the date of actual payment.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 17 March, 2021

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