

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 173 of 2020**Friday, this the 19th day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 726664-B Ex JWO/ACH GD Mahesh Pratap Tiwari
S/o Shri Satya Narayan Tiwari
R/o Village – Majhwa (Near Transport Nagar)
Post Office – Gaddopur, District – Faizabad – 224001 (UP)
..... ApplicantLd. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi -110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, 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**

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:-

“(I) The Hon'ble Tribunal may be pleased to set aside the rejection order dated 07/10/2019 (Annexure No A-1).

(II) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 01/02/2020 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.

(III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 75 percent in terms of Ram Avtar's Case.

(IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case."

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 19.01.1988 and was discharged from service on 31.01.2020 (AN) in low medical category after rendering more than 32 years of service. The Release Medical Board (RMB) assessed his disabilities (i) "**TRAVERSE FRACTURE PATELLA RT (OPTD)**" @ 15-19% for life, (ii) "**DIABETES MELLITUS TYPE-2**" @ 20% for life and (iii) "**PRIMARY HYPERTENSION**" @ 30% for life, composite disability @ 50% for life and opined the disabilities as neither attributable to nor aggravated by military service (NANA). On 17.07.2019, applicant submitted his appeal for reconsideration of his disability pension which was replied by the respondents vide order dated 07.10.2019 denying disability pension to the applicant. It is in this perspective that the applicant has preferred the present O.A.

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 Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) AIR

SCW 4236 and **Sukhvinder Singh vs. Union of India & Ors** (2014 STPL (WEB) 468 SC and **Union of India vs. Rajbir Singh** (2015) 12 SCC 264 and pleaded that applicant be granted disability pension @ 50% duly rounded off to 75% in view of Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant have been assessed composite @ 50% for life by RMB as neither attributable to nor aggravated by military service and onset is in peace area and not connected with service. Hence, as per Para 153 of Pension Regulations for the Air Force 1961 (Part-1), applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. As far as first disability “**TRAVERSE FRACTURE PATELLA RT (OPTD)**” of the applicant is concerned, it has been assessed @ 15-19% for life by RMB and considered it neither attributable to nor aggravated by military service being not connected with military duty as per approved injury report dated 14.11.2011. The disability is assessed below 20%, hence we are in agreement with RMB opinion of declaring it NANA and therefore, applicant is not entitled disability

pension for this disability as the Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%.

7. As far as second disability (ii) "**DIABETES MELLITUS TYPE-2**" assessed @ 20% for life and third disability (iii) "**PRIMARY HYPERTENSION**" assessed @ 30% for life of the applicant are concerned, the law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors**, (2013) 7 SCC 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)."*

8. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for his second and third disability for the reason by declaring the disease as NANA is that both have originated in peace area and has no close time association with Fd/HAA/CI Ops service. However, on further scrutiny, we have observed that these disabilities were initially detected in the year 2017 & 2018 after about 29-30 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring both diseases as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. We don't agree with the view that there is no stress and strain of service in military stations located in peace areas. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and his second and third disabilities should be considered as aggravated by military service.

9. Applicant's all three disabilities were assessed @ composite 50%, hence leaving first disability and after taking into consideration composite percentage of second and third disabilities only, the

composite percentage as assessed will be proportionately reduced and it will come between 30 to 50% say below 50% as per degree of disablement formula being adopted by the medical authorities.

10. In view of the above, applicant is held entitled to below 50% disability element for life from his date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element to 50% for life in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

11. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned orders are set aside. The second and third disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ less than 50% for life duly rounded off to 50% for life from the date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the date of discharge from service. 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.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: February, 2021
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