

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 230 of 2019**Monday, this the 22nd day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sgt Udaibir Singh Teotia (No. 618903B), S/O Late Raghuvir Singh, R/o Village Bhawa, Post – Bhatona, District-Bulandshahar.

.....Applicant

Ld. Counsel for : **Shri Vinay Pandey, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, (Air Force), South Block, New Delhi.
2. Air Headquarter, DDA PA-III, Vayu Bhawan, New Delhi .
3. Air Force Record Office, Subroto Park, New Delhi through the Competent Authority.
4. The Officer-Incharge, Air Force, Record Office, Subroto Park, New Delhi.
5. Principal Controller of Defence Accounts , Draupadi Ghat, Allahabad- 211014.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
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:-

1. *This Hon’ble Court may kindly be pleased set aside the following orders passed by the opposite parties without application of mind:-*

(i). *The letter dated 23.04.1992 issued and served upon the applicant, whereby referring the letter dated 27.08.1991 the office of Air Force Record his claim for disability pension has been rejected by CCDA (P) Allahabad.*

(ii). *The letter dated 28.09.1993 whereby referring the letter dated 27.08.1991 and 23.04.1992, the office of the Air Force Record communicated the applicant since your claim has been rejected therefore under the existing rule disability pension cannot be granted, advising the applicant to seek guidance from his Zila/Rajya Sainik Board.*

(iii). *The letter dated 03.12.2007 whereby the Air Headquarters, Vayu Bhawan, new Delhi rejected the First Appeal of the applicant saying therein that he has discharge from service on 29th March 1990 as he was suffering from Schizophrenia, which is constitutional nature and not connected with the service.*

(iv). *The letter dated 09.03.2009 passed on the representation dated 21.01.2008 whereby the Government of India, Ministry of Defence, New Delhi informed the wife of the applicant that the Committee has observed that the onset of the invaliding disease Schizophrenia was detected in November 1987 in peace station. There was close time association between onset of ID and OP service, after onset of ID your husband service in peace station only. Hence,*

disease occurred as neither attributable nor aggravated by military service. The committee has not accepted her appeal.

(V). Instead of the deciding the Second Appeal preferred by the applicant on 03.04.2009 referring the letter dated 08.06.2009 of the applicant. Vide letter dated 24.06.2009 opposite parties informed that second appellate committee has rejected his claim, vide letter dated 09.03.2009, since both appeals were rejected, hence his case has been settled and closed. The copy of the impugned letters dated 23.04.1992, 28.09.1993, 03.12.2007, 09.03.2009 and 24.06.2009 have been annexed herewith as Annexure No 1, 2, 3, 4 & 5 to the Compilation-I of this Original Application.

2. The Hon'ble court may kindly be pleased to issued suitable order or direction directing the opposite parties to reconsider and grant disability pension along with arrears and interest to the applicant with effect from 01.04.1990 towards his disability i.e. 50% as the applicant is suffering from permanent disease of "Schizophrenia" treatment of where is going on, otherwise the applicant suffer irreparable loss and injury."

2. The undisputed factual matrix on record is that the applicant was enrolled in Air Force on 30.05.1974 and discharged from service on 30.03.1990 under the clause '*being found medically unfit for further service in IAF*' after rendering more than 15 years of service. At the time of discharge Invaliding Medical Board (IMB) of the applicant was held on 07.12.1989 and the applicant was downgraded to Low Medical Category EEE (Permanent) for disease "**Schizophrenia-295**" @ **50%** for 2 years and opined it as neither attributable to nor aggravated by Air Force service (NANA). The applicant approached the respondents for grant of disability pension but

the same was rejected and the applicant was informed vide letter dated 23.04.1992. The applicant preferred first and second appeal which too were rejected vide letters dated 03.12.2007 and 28.09.1993. It is in this perspective that the applicant has preferred the present Original Application.

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 Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Indian Air Force. He pleaded that disability of the applicant be considered as a result of stress and strain of Air Force service. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases as well as arrears thereof, as such the applicant is entitled to disability element @ 50% and its rounding off to 75%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 50% for two years, but he submitted that competent authority while rejecting the claim of the applicant has viewed that disability was found as neither attributable to nor aggravated by Air Force service, therefore, as per Rule 153 of Pension Regulations for IAF, 1961

(Part-I), the primary conditions for grant of disability pension is 'unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over'. In the instant case, the disability "**Schizophrenia-295**" @ 50% for two years being neither attributable to nor aggravated by Air Force service, claim for grant of disability pension has rightly been rejected. However, applicant has been granted service pension and other retiral dues admissible to him.

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

6. The questions which needs to be answered are of two folds:-

(a) Whether the disability of the applicant is attributable to or aggravated by Military Service?

(b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

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. After considering all issues we have noted that the only reason given by IMB for denying Attributability for disease is that it was constitutional in nature hence not connected with

service. We find that when the applicant joined Air Force, he was medically examined and found to be in Shape-I and the aforesaid disability was first time diagnosed in the year 1987 while applicant was serving in Jammu & Kashmir i.e. after about 13 years of joining the service which resulted in the downgrading of his medical category. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service conditions and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of *Dharamvir Singh* (Supra). Therefore, we consider the diseases of the applicant as aggravated by Air Force service.

9. On the issue of rounding off of disability pension, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding as he had retired from service on 01.04.1990.

10. Since the applicant's RMB was valid for two years from the date of discharge, hence, the respondents will now have to conduct a fresh RSMB for him.

11. In view of the above, the Original Application No. 230 of 2019 deserves to be allowed, hence **allowed**. The impugned orders passed by the respondents rejecting the claim of

disability element are set aside. The disability of the applicant is held as aggravated by Air Force service. The applicant is held to be entitled to disability element @ 50% for two years from the date of his discharge. Respondents are directed to grant disability element to the applicant at the rate of 50% for two years from the date of discharge i.e. 01.04.1990. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 22 March, 2021

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