

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 8 of 2021**Thursday, this the 24th day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Col. Shiv Balak Singh TC-31508L (Retd) House No. 610/1009,
Keshav nagar, Sitapur Road, Lucknow (U.P)-226020

..... Petitioner

Learned counsel for the :**Shri Rudra Pratap Singh**, Advocate.
Petitioner **Shri Alok Kumar Singh**, Advocate

Versus

1. Union of India, through its Secretary Ministry of Defence, New Delhi.
2. The Chief of Army Staff Army HQ (South Block), Sena Bhawan, New Delhi-110011.
3. Addl. Director General of Manpower (Policy & Planning)/MP-6(E) AG's Branch Integrated HQ, Min of Defence (Army) West Block-III, RK Puram, New Delhi-110066.
4. Addl. Director General of Personnel Services/ AG's Branch Integrated HQ, Ministry of Defence (Army) Church Road, Brassery Avenue, New Delhi-110011.
5. Principal Controller of Defence accounts (Pension) Allhabad, U.P.

.....Respondents

Learned counsel for the :**Shri Asheeh Agnihotri**,
Respondents. Central Govt. Counsel

ORDER (Oral)

1. Being aggrieved with denial of disability element of pension the petitioner had filed O.A. No. 2085 of 2021 in the Hon'ble AFT, Principal Bench, New Delhi which was transferred to this Tribunal and re-numbered as T.A. No. 8 of 2021. The petitioner has made the following prayer:-

- (i) *Issue directions to the respondents thereby directing to adjudicate upon and issue necessary sanction for grant of disability element of pension in respect of petitioner immediately.*
- (ii) *Issue directions to the respondents thereby directing to grant disability element of pension for disability i.e. Coronary Artery Disease (IWM), which is already held and accepted as aggravated by service by Release Medical Board with net qualifying disability @20% with rounding off benefit to 50% for life wef 1.1.2020 along with interest @12%p.a and*
- (iii) *To award any other further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the application and against the respondents.*

2. Brief facts of the case giving rise to this application are that the petitioner was enrolled in Army Postal Service (APS) on 09.09.1987 and thereafter he was commissioned in APS on 01.05.1997 and served in the Indian Army till 31.12.2019 (AN). During the course of his service he suffered from Coronary Artery Disease (CAD) in February, 2002 while serving in field area (Op Parakram) and was placed in low medical category. Thereafter, in October, 2014 he was also diagnosed to be suffering from Diabetes Mellitus Type-II. Further, in October, 2019 he was also diagnosed with Macrocytic Anemia. Prior to retirement he was brought before the Release Medical Board (RMB) which assessed (i) Macrocytic Anemia @ 10% for life neither attributable to nor aggravated by military service, (ii) Diabetes Mellitus Type-II @ 20% for life neither

attributable to nor aggravated by military service and (iii) Coronary Artery Disease @ 20% for life aggravated by military service. The petitioner is stated to have made several correspondences for grant of disability element of pension and in response to one of the letters Headquarters Southern Command, Pune had approached Integrated Headquarters of MoD (Army), Adjutant General's Branch, New Delhi vide letter dated 22.01.2020. In response to letter dated 22.01.2020, the Army Headquarters issued letter dated 04.08.2020 to PCDA (P), Allahabad directing them to release entitled disability element of pension to the petitioner but till date no action seems to have been taken in this regard. It is in this perspective that this O.A. was filed for grant of disability element of pension.

3. In this case the respondents have not filed counter affidavit even after issuing directions vide orders dated 17.01.2022 and 15.02.2022. On 15.02.2022 it was made clear that if the counter affidavit is not filed on the next date i.e. 24.03.2022 the opportunity to file the same shall be closed. Even today the respondents have failed to file counter affidavit.

4. Therefore, we proceed to decide the matter on the basis of pleadings made by learned counsel for the petitioner and Army Headquarters letter dated 04.08.2020 as per which PCDA (P), Allahabad were directed to grant 20% disability element of pension to the petitioner keeping in view that his disability Coronary Artery Disease is 20% for life aggravated by military service.

5. Since the respondents have conceded that petitioner's disability Coronary Artery Disease is 20% for life aggravated by military service, we hold that the petitioner is entitled to disability element @ 20% for life

w.e.f. his next date of retirement i.e. 01.01.2020. The respondents are directed to grant 20% disability element of pension to the petitioner w.e.f. his next date of discharge which shall also be rounded off to 50% disability element of pension for life in terms of the Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar & Ors*** (Civil Appeal No 418 of 2012 decided on 10th December 2014).

6. In view of the above the petitioner is held entitled to 20% disability element of pension for life which shall stand rounded off to 50% disability element of pension for life from the next date of his discharge. Respondents are directed to comply with the order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

7. T.A. is allowed accordingly.

8. No order as to costs.

9. Miscellaneous application(s), pending if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 24th March, 2022

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