

Court No. 1

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

Original Application No 1004 of 2022

Monday, this the 20th day of March, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. 820280 Ex NC (E) Raghu Nath Singh, S/o Shri Sheo Sagar Singh, R/o: Village & Post: Nasara, Distt: Kanpur Nagar (U.P) - 209401.

..... Applicant

Ld. Counsel for the Applicant : **Shri DS Tiwari, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence Govt. of India, New Delhi
2. Chief of The Air Staff, Air HQ, Vayu Bhawan, New Delhi, PIN - 110106.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor,
Subroto Park, New Delhi - 110010.
4. The Joint Controller Defence Accounts (AF), Subroto Park, New Delhi - 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu,
Central Govt Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Ravindra Nath Kakkar, Member (J)”

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 impugned rejection order dated 16.11.2021 (Annexure No. 1)

(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from the date of discharge i.e. 30.09.2021 along with the Broad Banding to 75% with its arrears and interest thereon at the rate of 12% per annum.

(III) Any other appropriate order or direction which this Hon’ble Tribunal may deem fit, just and proper in the nature and circumstances of the case including cost of the litigation.”

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 31.03.1989 and was discharged from service on 30.09.2021(AN) in low medical category after serving more than 32 years of service. The Release Medical Board (RMB) held at the time of discharge assessed his disabilities (i) **“SNHL Left old H90.4, Z 09.0” @ 20% for life,** (ii) **“PRIMARY**

HYPERTENSION (Fresh)” @ 30% for life and (iii) “Type 2 Diabetes Mellitus (Fresh)” @ 20% for life and composite assessment for all disabilities was assessed as 60% for life and opined that all the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant’s claim for grant of disability pension was rejected by the respondents vide order dated 16.11.2021. Thereafter, applicant submitted a representation dated 19.05.2022 which has not been replied by the respondents till date. Being denied by disability element, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon’ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no

disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 60%. Learned counsel for the applicant prayed that disability pension may be rounded off to 75%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities @ 60% for life but it opined that the disabilities are NANA. As such, under the provisions of Rule 153 of Pension Regulations for Indian Air Force 1961 (Part 1), his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records. The question which needs to be answered is whether the disabilities of the applicant are attributable to or aggravated by Military Service?

6. After going through the opinion of the medical board, we have noted that all the disabilities have been opined as NANA by the RMB.

7. As far as 1st disability i.e. 'SNHL (Left)' is concerned, we have noticed that aggravation in SNHL case is conceded in individuals exposed to loud noise like gunfire, bombs and missile blasts, aircraft engines and engine rooms onboard ships etc. Service personnel are exposed intermittently to loud noise in the form of small arms, gunfire and arty firing. This results in chronic noise induced hearing damage which progresses insidiously. Long term occupational exposure to loud noise cannot be ruled out as all service personnel irrespective of trade are exposed to loud noise of small arms firing during service. Worsening of hearing may take place progressively over many years rather than always being an acute event following noise exposure. In the instant case, the trade of individual is Mess Waiter and not working in close proximity of gun fire (small arms, grenade, arty guns, bomb blast, tanks) and not in consistent exposure to blast of loud noise such as working with aeroengine, factory workers run the risk of labyrinthine deafness. Hence this disability is NANA by service in terms of Para 23 of chapter VI of GMO 2002 amendment 2008 and DGAFMS letter dated 14.01.2019.

8. As far as 2nd and 3rd disabilities are concerned, only reason for declaring the disease as NANA is that it has originated in peace area and has no close time association with Fd/CI Ops/HAA tenure.

However, on further scrutiny, we have observed that this disability was detected in 2020, after about 31 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as NANA are 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. Thus, we are of the considered opinion that 2nd and 3rd disabilities assessed as 30% and 20% for life respectively are to be considered as aggravated by military service because stress and strain of military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh***(supra).

8. The applicant will also be eligible for the benefit of rounding off of 2nd and 3rd disabilities to 50% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar***(Civil Appeal No 418 of 2012 decided on 10.12.2014).

9. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned order rejecting claim of the applicant for grant of disability element is set aside. The applicant's disabilities are to be considered as aggravated by military service and his disability element of pension is to be rounded off to 50% for life

from the date of his discharge i.e.30.09.2021. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 20th March, 2023
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