

**Court No. 1**

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

**Original Application No 892 of 2022**

Monday, this the 20<sup>th</sup> day of March, 2023

**Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)**

**Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

No. 685503-B JWO Udai Narain Tripathi (Retd.) aged about 57 years  
s/o Shri (Late) Ram Kuber Tripathi, Vill – Maduraniganj, PO-  
Basupur, District – Pratapgarh (UP)- 230401.

..... Applicant

Ld. Counsel for the Applicant: **Shri Ravi Kumar Yadav, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence (IAF),  
South Block, New Delhi.
2. Chief of Air Staff, Air HQ, Vayu Bhawan, New Delhi -110011.
3. Director III A (DP), DAV, Hqrs, Subroto Park, New Delhi –  
110010.
4. PCDA (P) (Air Force), Draupadhi Ghat, Allahabad (UP) –  
212114.

..... Respondents

Ld. Counsel for the Respondents : **Shri D.K Pandey,  
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) to quash and set aside the Respondent No. 3 letter No. Air HQ/99798/1/ 685503/02/22/DAV(DP/RMB) dated 10 Jan 2022. (Annexure No. 1 of instant O.A and Impugned order).
- (II) to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the date of his retirement from service (01.03.2020) and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.
- (III) to grant the benefit of rounding off of the disability pension from 40% to 50% in terms of Govt. of India letter dated 31 Jan 2001 and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.
- (IV) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicants.”

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 30.08.1985 and was discharged from

service on 28.02.2022 (AN) in low medical category after serving more than 36 years of service. The Release Medical Board (RMB) held at the time of discharge assessed his disability “**DIABETES MELLITUS TYPE II (OLD)**” @ 40% for life and opined that the disability of the applicant was 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 10.01.2022. Applicant preferred first appeal against rejection of his claim which is still pending with the respondents. Being aggrieved with denied by disability pension, 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 @ 40%. Prayer for rounding off of disability pension from 40% to 50% has been made in the Original Application. During the arguments, learned counsel for the applicant also prayed for rounding off of disability pension.

4. On the other hand, learned counsel for the respondents has verbally submitted that though the RMB had assessed the disabilities of the applicant @40% for life but it opined that the disability is 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 has no merit and is liable 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 disability of the applicant is attributable to or aggravated by Military Service?

6. As far as disability i.e. '**Type II Diabetes Mellitus**' is concerned, we have noticed that the 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 2016, after about 30 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 disability ie. "Type II Diabetes Mellitus" @ 40% for life is 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).

7. The applicant will also be eligible for the benefit of rounding off of disability from 40% 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).

8. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned order passed by the respondents rejecting his claim

for grant of disability is set aside. The applicant's disability "**Type II Diabetes Mellitus**" assessed @ 40% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 40% to 50% for life from the date of his discharge i.e. 01.03.2022.

9. 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: 20 March, 2023  
UKT/