

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 958 of 2022**Tuesday, this the 28th day of March, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

IC- 59826L Lieutenant Colonel Himanshu Suryavanshi, (Retd), Son of Anand Singh Suryavanshi, Resident of : Flat No. 237/2, Sirmour Enclave, Sirmour Marg, Kishan Nagar, Dehradun, Uttarakhand - 248001.

-----Applicant

Ld. Counsel for the Applicant: **Shri Aditya Singh Puar, Advocate**

Versus

1. Union of India through Secretary to Govt of India, Ministry of Defence, South Block, New Delhi - 110 011.
2. Additional Director General of Personnel Services, P.S. Directorate, Sena Bhawan, DHQ PO, New Delhi - 110 011.
3. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri GS Sikarwar,
Central Govt Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice 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) *Limited Prayer for Directions to the Respondents to process the case for grant of disability pension to the Applicant in terms of their own recent policies and law declared by Constitutional Courts and consequently release the disability pension (including service element and disability element) w.e.f Applicant’s date of release from service @ 30% disability (rounded off to 50%), with costs and interest as per the declaration of the Applicant’s disability being ‘aggravated by military service’ by the duly constituted Release Medical Board (Annexure A-1), since the Applicant’s disability which was declared ‘attributable / aggravated’ by the Release Medical Board has been unilaterally and arbitrarily rejected by the finance/ administrative authorities of the Union of India vide Impugned Orders I and II.*
- (ii) *With a further prayer that in case of contest of the Prayer of the Applicant, heavy costs, interest and compensation may kindly be directed to be paid to the Applicant to be recovered from the*

authority who may have failed to process the case of the Applicant in accordance with law and with a further prayer for ignoring / setting aside of the reasons mentioned in the impugned orders (Impugned Orders I & II) rejecting the claim of disability pension being in contravention of Law Laid down by Hon'ble Courts, or any other direction or order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

(iii) Any other Order / direction (s) this Learned Tribunal may deem fit.”

2. The facts of the case, in brief, are that applicant was commissioned in the Indian Army on 13.05.2000 and was retired from service on 13.05.2021(AN) in low medical category after serving 20 years 11 months of service. The Release Medical Board (RMB) assessed his disabilities (i) **“PRIMARY HYPERTENSION (I10.0)”** @ 30% for life, (ii) **“DYSLIPIDEMIA (E78.9)”** @ 5% for life and (iii) **“OBESITY (E66.0)”** @ 5% for life and the net assessment has been assessed @ 30% for life. The RMB has opined that all the disabilities of the applicant were neither attributable to nor aggravated by military service (NANA) except the (i) PRIMARY HYPERTENSION which has been considered as Aggravated by military service. The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 02.11.2021. Thereafter, applicant submitted first appeal dated 06.01.2022 which

was also rejected by the respondents vide letter No. 08.06.2022. 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 may be considered as aggravated by service and applicant be granted disability pension @ 30% and rounded off to 50%.

4. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disabilities of the applicant (i) @30% (ii) @5% and (iii) @5% for life but it opined that

the disabilities are NANA except the (i) PRIMARY HYPERTENSION which has been considered as Aggravated by military service and net assessment qualifying disabilities is 30%. He pleaded that Primary Hypertension is a multi factorial disorder with a genetic preponderance. It may be held aggravated if its onset is in Field/HAA/ CI Ops. Disability Obesity was opined as NANA being a lifestyle disease and not related to military service. In the instant case, onset of disabilities occurred while serving in peace station and officer continued to serve in a peace station. As such, under the provisions of Rule 171 of Pension Regulations for Indian Army 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 the first disability "PRIMARY HYPERTENSION (I10.0)" has been opined as not attributable but aggravated by the RMB

while the other two disabilities viz. Dyslipidemia and Obesity are considered as NANA by the RMB.

7. We have noticed that the only reason for declaring the disease as not attributable 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 on 08.07.2010, after about 10 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as not attributable 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. Thus, we are of the considered opinion that second disability i.e. "Primary Hypertension" @ 30% 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).

8. The applicant will also be eligible for the benefit of rounding off of second disability from 30% 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 allowed, hence **allowed**. The impugned order is set aside. The applicant is not entitled disability element for the disability Obesity. The applicant is getting service pension for the services rendered by him. The applicant's other disabilities are to be considered as aggravated by military service and his disability element of pension is to be rounded off from 30% to 50% for life from the date of his retirement i.e. 13.05.2021. 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: 28th March, 2023
UKT/-