

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 49 of 2023

Tuesday, this the 11th day of March, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

JWO Neeraj Kumar (Retd.) (Service No. 715139-S), House No. 205, Kamdhenu Flat 1, Near Mahadev Temple, OGNAJ, Ahemdabad, Gujarat, Pin-380060.

..... Applicant

Ld. Counsel for the : **Shri V.P. Pandey**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101 A, South Block, DHQ PO, New Delhi, Pin-110011.
2. The Chief of the Air Staff, Through the Directorate of Air Veterans, Air HQ, Subroto Park, New Delhi, Pin-110010.
3. The Joint CDA (Air Force), Subroto Park, Delhi Cantt., New Delhi, Pin-110010.
4. The PCDA (P), Allahabad, Uttar Pradesh, Pin-211012.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 49 of 2023, for the following reliefs:-

- (a) *To quash and set aside the Applicant’s RMB proceedings to the extent the order denies grant of Disability element of Pension to the Applicant.*
- (b) *To set aside the impugned order and direct the respondents to grant the disability element of pension @40% broad-banded to 50% for life, from the date of discharge, with all consequential benefits, along with arrears & interest @12% p.a., by treating disease as attributable to and aggravated by military service, in view of the Hon’ble Apex Court Judgment of Rajbir Singh (Supra) and Dharamvir Singh (Supra), or*
- (c) *To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.*

2. Briefly stated, the applicant was enrolled in the Indian Air Force on 25.11.1985 and discharged on 30.11.2020 in Low Medical Category on fulfilling the conditions of his enrolment. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at 47 SU Air Force

on 15.01.2020 assessed his disabilities (i) **'PRIMARY HYPERTENSION (OLD) ICD I 10.0, Z09.0'** @30% and (ii) **'IMPAIRED GLUCOSE TOLERANCE (OLD) ICD R73.0, Z09.0'** @15%, **composite disabilities @40% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 16.09.2020. The applicant preferred Appeal/representation dated 26.08.2021 through his Counsel but of no avail. It is in this perspective that the applicant has preferred the present 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 Air Force. The diseases of the applicant were contracted during the service, hence they are 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 such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @40% for life have been regarded as NANA by the RMB, hence as per

Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over”* the applicant is not entitled to disability element of disability pension. He further contended that the applicant was overweight, the record of applicant’s overweight since his enrolment have been mentioned in para Nos. 3 and 11 of the Counter Affidavit. The weight record chart of the applicant submitted by the respondents in para 3 and 11 of the Counter Affidavit is as follows :-

Date	Type of Medical Exam	Actual Weight in Kgs	IWB (in Kgs)	Over-weight %	BMI	Advice
11 Oct 85	Primary	48	-	-	-	-
08 Mar 04	Extension of service	70	59.5	-	24.24	-
28 Mar 05	Annual	72	72	18.6	-	-
13 Feb 06	Annual	71	61	16.3	24.8	To reduce weight by dietary control & regular exercise
19 Apr 07	Annual	69	61	11.5	25.36	- do -
01 Jul 08	Annual	70	61	14.75	-	-
19 Aug 09	Extension of Service	67	61	09.83	24.6	-
19 Jul 10	Annual	72	59.5	20	26.4	-
30 Jun 11	Annual	74.5	64	-	-	-
24 Sep 13	Annual	72	64	-	26.12	To reduce weight by dietary control & regular exercise
27 Aug 14	Annual	75	66	-	26.09	-
13 Aug 15	Annual	76	66	-	27.25	-
09 May 16	Annual	76	64	15.79	27.58	To reduce weight by dietary control & regular exercise
07 Sep 17	Annual	77	64	20.31	27.61	To reduce weight by dietary control & regular exercise
18 Feb 19	Initial Med	77	64	20.31	27.61	-

	Board					
15 Jan 20	Re-Cat	77	64	20.31	27.61	-
15 Jan 20	Release	77	64	20.31	27.66	-

The applicant was advised time and again to reduce weight by dietary control and regular exercise but failed to do so. The applicant was initially detected to have ‘Primary Hypertension’ and Impaired Glucose Tolerance’ and was placed in low medical classification A4G4 (Temp-12 weeks) vide AFMSF-15 dated 18.02.2019. The applicant was thereafter reviewed periodically and was placed in medical classification A4G2 (P) vide AFMSF-15 dated 15.01.2020. It is a documented fact that being over-weight is independent modifiable risk factor for contracting Primary Hypertension and Impaired Glucose Tolerance. Lack of exercise, sedentary lifestyle and dietary indiscretion contribute towards and individual being overweight. Ld. Counsel for the respondents contended that certain diseases like Primary Hypertension and Diabetes Mellitus are primarily due to interplay of metabolic and life style factors and manifest later in life irrespective of service conditions. Obesity or overweight is one of the important factors of the cause of these types of disabilities and failure in maintaining ideal weight, which can be managed by the applicant by regular exercise and restricting diet, is one of the important cause of these types of disabilities. Ld. Counsel for the respondents further submitted that the applicant was not overweight at the time of

enrolment but he gradually gained weight and by the time of onset of disabilities applicant was overweight by more than 20% from ideal weight. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service. He pleaded for dismissal of the Transferred Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered is whether the disabilities of the applicant are attributable to or aggravated by Air Force Service?

6. In the RMB proceedings of the applicant, the disabilities of the applicant i.e. '**PRIMARY HYPERTENSION (OLD) ICD I-10.0, Z09.0**' and '**IMPAIRED GLUCOSE TOLERANCE (OLD) ICD NO. R73.0, Z09.0**' are opined as NANA and in detailed chart of overweight have been mentioned in para No. 3 and 11 of the Counter Affidavit. At the time of discharge from service, we find that applicant's ideal weight was 67 Kg whereas the actual weight was 77 Kg, over weight is 13 Kg, which is 20.31% excess than the ideal weight. The onset of disabilities was on 18.02.2019. The study of a national and international reports and molecular sciences reveal that obesity and excessive weight gain is identified

as the most important and significant risk factor in the development and progression of Type 2 Diabetes Mellitus in all age group and obesity and overweight significantly influence the risk of Hypertension. We are of the view that overweight plays a vital role in disabilities like Hypertension and Diabetes etc. which are a serious health condition that entails a higher risk of cardio-vascular diseases.

7. Further, in the Counter Affidavit it is also mentioned that the applicant was educated about life style measures to reduce weight. He should have reduced his weight to overcome the problem by restricting the diet and required exercise which has not been done by him, therefore, organization cannot be held liable for the own actions of the applicant. There is no denial from the fact that if the claimant is himself not controlling the factors of disabilities which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions. We do not find any substance in the submission of the Ld. Counsel for the applicant that the disabilities of **PRIMARY HYPERTENSION (OLD) ICD I-10.0, Z09.0** and **'IMPAIRED GLUCOSE TOLERANCE (OLD) ICD NO. R73.0, Z09.0'** have causal connection with the military service. As such the applicant's disabilities are held as NANA.

8. In view of the discussions made above, **Transferred Application No. 49 of 2023** lacks merit and same is accordingly **dismissed**.

9. Pending application, if any, stands disposed of.

10. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 11 March, 2025

AKD/-