

E- Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 353 of 2021**Friday, this the 06th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex JWO Bharat Singh (Service No 656549B, S/o late Shri Ramadhar, R/o Village- Sidhagar, Post Office- Maharaur, District- Ghazipur (U.P.) 233230.

.....Applicant

Ld. Counsel for : **Shri Shiv Kant Pandey and**
Applicant **Shri Amit Pandey, Advocate**

Versus

1. Union of India, through Defence Secretary, Ministry of Defence, Govt of India, South Block, New Delhi 110010.
2. The Chief of Air Staff, Air HQ, Vayu Bhawan, Rafi Marg, New Delhi – 110106.
3. Deputy Controller Defence Account (Air Force), Subroto Park, New Delhi – 110010.
4. The Director of Air Veterans (AV-III Appeal), Air HQ AFRO Building, Subroto Park, New Delhi – 110010.
5. The Director, Directorate of Air Veterans, Air HQ, Subroto Park, New Delhi – 110010.

.....Respondents

Ld. Counsel for the : **Shri Sunil Sharma,**
Respondents **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(i) This Hon’ble Tribunal may graciously be pleased to set aside RMB dated 26.07.2019 (Annexure A-5 to this O.A.), to the extent whereby disability pension has been denied.

(ii) This Hon’ble Tribunal may graciously be pleased to set aside letter Air HQ/99798/1/656549/06/20/DAV (DP/RMB) dated 09.06.2020 (Annexure A-7 to this O.A.).

(iii) This Hon’ble Tribunal may graciously be pleased to grant disability pension to applicant, for life to be rounded to 50%.

(iv) This Hon’ble Tribunal may graciously be pleased to direct Dy CDA Subroto Park New Delhi to issue the PPO for disability granting disability from 01.07.2020 and for life @ 50% and more disability.

(v) This Hon’ble Tribunal may graciously be pleased to direct the respondents to pay arrears of disability pension, which accrued since 01.07.2020 and till date of actual payment of disability pension.

(vi) This Hon'ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.

(vii) This Hon'ble Tribunal may award the cost of petition to applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Air Force on 03.04.1983 and was discharged from service on 01.07.2020 in low medical category A4G4 (Permanent) on fulfilling the terms of engagement. At the time of discharge Release Medical Board held on 26.07.2019 assessed disability of the applicant "**TYPE II DIABETES MELLITUS (OLD) Z-09.0**" @ 20% for life and considered as neither attributable to nor aggravated by the military service. The applicant was granted service pension from the next date of retirement. Claim of the applicant for the grant of disability pension was rejected by the respondents vide letter dated 30.05.2020 being neither attributable to nor aggravated by military service and not related to Air Force service. His appeal for grant of disability pension was also rejected vide letter dated 27.07.2021. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in Indian Air Force in medically fit condition and, thereafter, he has been discharged from service in Low Medical Category and his disability was assessed @ 20% for life and considered as neither attributable to nor aggravated by military service. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 20% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was assessed @ 20% for life but disability was found as neither attributable to nor aggravated by military service, therefore, in terms of Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected.

5. We have heard learned counsel for the parties and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words :

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to

derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. Thus, considering all issues we have noted that Release Medical Board had not given any reason in support of its opinion, particularly there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for Air Force service. In absence of any evidence on record to show that the applicant was suffering from disease at the time of acceptance in service and the fact that the applicant had put in over 21 years of service when for the first time the disease was detected in the year 2004, it will be presumed that the applicant was in sound physical and mental condition at the time of entering in service and deterioration in

his health has taken place due to Air Force service. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of ***Dharamvir Singh*** (Supra). Therefore, we consider the disease of the applicant as aggravated by military service.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly O.A. is **allowed**. The impugned orders rejecting the claim for grant of disability pension passed by the respondents are set aside. The disability assessed @ 20% for life is to be considered as aggravated by Army service. The

applicant is already in receipt of service element hence the applicant is entitled to get disability element @ 20% for life which would be rounded off to 50% for life from next date of discharge. The respondents are directed to give effect to this 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.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 06 May, 2022

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