

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 68 of 2022**Wednesday, this the 18th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)627367 MWO Manoj Kumar Srivastava (Retd)
S/o Bimal Krishna Srivastava
C/o Diwakar Srivastava,
978/637 Nirala Marg, Daraganj, Near Veni Madhav Temple,
Prayagraj (UP) – 211006

..... Applicant

Ld. Counsel for the Applicant: **Shri Raj Kumar Mishra,**
Ms. Upasna Mishra &
Ms. Anand Kanwar, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi.
3. The principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi – 110010.
5. JDCA (Air Force), 2nd Floor, Air Force Central Account Office Building, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ram Saran Awasthi,**
Central Govt Counsel**ORDER**

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:-

“(a) To issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the impugned order dated 02 Jun 2020.

(b) To issue/pass an order or direction of appropriate nature to the respondents to summon the rejection order of disability pension passed on 02 Jun 2020 and an appeal preferred by the applicant and the same may be set aside/quashed.

(c) To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date of discharge i.e. 01 Nov 2020 and interest thereon at the rate of 18% per annum.

(d) Issue/pass an order or direction to the respondents to round off the disability pension from 40% for life to 50% for life in terms of Ram Avtar’s case.

(e) Issue/pass any other order or direction or any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Air Force on 25.01.1982 and was discharged from service on 31.10.2020 (AN) in low medical category after rendering more than 38 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **“SEIZURE DISORDER”** @ 20% for life and (ii) **“DIABETES MELLITUS TYPE II”** @ 20% for life and composite assessment @ 40% for life and opined the disabilities as neither attributable to nor aggravated by military service. The disability pension claim of the applicant was rejected by the respondents vide order dated 02.06.2020. The applicant submitted first appeal dated 05.01.2021 which was also rejected by the

respondents vide order dated 22.10.2021. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disabilities of the applicant were contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. UOI & Ors***, (2013) 7 SCC 316 and pleaded that applicant be granted disability pension @ 40% duly rounded off to 50% in view of ***Union of India vs. Ram Avtar***, decided on 10.12.2014 and Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant (i) "**SIEZURE DISORDER**" @ 20% for life and (ii) "**DIABETES MELLITUS TYPE II**" @ 20% for life and composite assessment @ 40% for life by RMB are neither attributable to nor aggravated by military service and not connected with service with onset in peace area and metabolic in nature. Hence, as per Rule 153 of Pension Regulations for the Air Force, 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – are the disabilities of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 316. 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)."

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for the reason by declaring the disease as NANA is that 'applicant was not posted to HAA/Ops Locations/Field Area at the time of onset of the disability and metabolic in nature, hence, neither attributable to nor aggravated by the service'. However, on further scrutiny, we have observed that disability was initially detected in the year 2009 and 2014 after about 27 &/32 years of service respectively. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as NANA 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 as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 40% disability element for life from the date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element from 40% to 50% for life in terms of the decision of Hon'ble Supreme

Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order is set aside. The disabilities of the applicant are to be considered as aggravated by military service. The applicant is entitled to disability element of pension @ 40% for life duly rounded off to 50% for life from the next date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the next date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

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