

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 697 of 2021**Friday, this the 13th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 674605H Ex MWO Sashi Kant Mishra
R/o House No. 221B/1, Mahendra Nagar,
PO – Dhoomangang,
Prayagraj (UP) – 211011

..... Applicant

Ld. Counsel for the Applicant: **Dr. Amit Asthana**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101A, South Block, DHQ PO, New Delhi-110011.
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi – 110011.
3. Director, Dir of Air Veterans, Subroto Park, New Delhi – 110010.
5. JDCA (Air Force), New Delhi C/o Air Force Central Account Office, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Anurag Mishra**,
Central Govt Counsel**ORDER (Oral)**

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. Impugned order dated 18.02.2020 be set aside passed by the respondents to the extent this order deny the grant of Disability Pension to the applicant as disability was neither attributable to nor aggravated by military service.

b. Direct Respondents to grant Disability pension wef 31.03.2019 (date of discharge) @ 50% (after rounding off from 20% to 50%) as applicant's case is squarely covered on the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of **Dharamvir Singh vs. Union of India & Ors** (Civil Appeal No. 4949 of 2013 judgment dated 02.07.2013), **Union of India vs. Rajbir Singh** (Civil appeal No. 2904 of 2011) judgment on 13.02.2015 alongwith the 26 concerned appeals), **Union of India & Ors. Vs. Angad Singh Titaria** (Civil Appeal No. 11208 of 2011 judgment on 24.02.2015) and latest judgment **Ex. Gnr. Laxmanaram Poonia (Dead) through Lrs. Vs. Union of India and Ors.** (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017) and on the matter of rounding of disability pension Hon'ble Supreme Court order dated 10.12.2014 in Civil Appeal No. 418/2012 titled **Union of India and Ors vs. Ram Avtar.**

c. Direct respondents to grant arrears of disability pension wef 31.07.2016 (date of discharge) with 12% interest as applicant case squarely covered with this Hon'ble Tribunal in OA No. 1439/2016 title **Ex Sgr. Girish Kumar vs. UOI & Ors.** Order dated 01.12.2017 and Hon'ble Supreme Court in Civil Appeal No. 9946 of 2016 order dated 20.09.2016 titled **Davinder Singh vs. Union of India and Ors.**

d. Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Air Force on 10.02.1982 and was discharged from service on 31.03.2019 (AN) in low medical category after rendering more than 37 years of service. The Release Medical Board (RMB) assessed his disabilities (i) “**PRIMARY HYPERTENSION**” @ 30% 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 31.01.2019. The applicant submitted first appeal dated 02.04.2019 which was rejected by the respondents vide order dated 18.02.2020. 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, ***Union of India vs. Rajbir Singh*** (Civil appeal No. 2904 of 2011), decided on 13.02.2015 and ***Union of India & Ors. Vs. Angad Singh Titaria*** (Civil Appeal No. 11208 of 2011), decided on 24.02.2015, 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. No counter affidavit in the case has been filed by the respondents even after granting several opportunities. However, on the basis of instructions, learned counsel for the respondents, during

the course of arguments, submitted that disabilities of the applicant (i) “**PRIMARY HYPERTENSION**” @ 30% 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. 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, hence, neither attributable to nor aggravated by the service'. However, on further scrutiny, we have observed that disability was initially detected in the year 2012 and 2015 respectively after about 30 years of service. 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 disability of the applicant is 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 date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the 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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