

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 249 of 2019

Monday, this the 30th day of September, 2019

Hon'ble Mr. Justice Virender Singh, Chairperson
Hon'ble Air Marshal BBP Sinha, Member (A)

Chhedi Singh Rathor (No. 286048A Ex Warrant Officer)
Son of Late Raj Karan Singh Rathor
Resident of Plot No. 311/7A, Jarauli Phase No. 1
Near Triveni School, Barra
Kanpur, Uttar Pradesh - 208027

.....Applicant

Ld. Counsel for : **Shri Yash Pal Singh,**
the Applicant **Advocate**

Versus

1. Union of India through Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Air Officer-in-Charge, Administration,
Air Headquarters (JDPA-III),
Vayu Bhawan, New Delhi – 110011.
3. Air Force Commanding,
Air Force Record Office, Subroto Park,
New Delhi – 110010.
4. Deputy Controller of Defence Accounts (Air Force),
New Delhi.
5. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad.

.....Respondents

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

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(a) Issue/pass an order or direction setting aside the recommendation of the Release Medical Board dated 02.08.2005 to the extent of holding the disability of the applicant as ‘not connected with service’ and letter/order dated 16.05.2006 rejecting the claim of the applicant for disability pension (Annexure No. 1 and 2 to the Original Application), after summoning the relevant original records.*
- (b) Issue/pass an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge including arrears with interest; and also the benefit of rounding off and other consequential benefits of ex-serviceman.*
- (c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) Allow this Original Application with cost.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Air Force on 22.12.1967 in medically fit condition and discharged from service on completion of the terms of engagement on 30.06.2006 in low medical category after serving more than 38 years of service. The Release Medical Board held before retirement, considered the disability for ID No. (i) “PRIMARY HYPERTENSION” as neither attributable to nor aggravated by military service and assessed it 30% for life and ID No. (ii) “HYPERLIPIDEMIA” as neither attributable to nor aggravated by military service and assessed it 1-5% for 2 years and composite assessment was given 30%. The claim of the applicant

for grant of disability pension was rejected by Air Force Record Office vide order dated 16.05.2006 but no documents relating to the Medical Board were provided to the applicant. The applicant submitted an application dated 06.04.2018 under RTI Act, 2005 to the respondents and then received copy of Release Medical Board vide their letter dated 05.06.2018. Thereafter, the applicant submitted an application/representation dated 02.07.2018 requesting the respondents to provide disability pension but the same was rejected vide letter dated 02.08.2018. Aggrieved by the denial of disability pension, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has been retired from service in Low Medical Category and his disability **'PRIMARY HYPERTENSION'** has been assessed @ 30% for life and considered as neither attributable to nor aggravated by military service. Learned counsel for the applicant placed reliance on the Entitlement Rules for Casualty Pensionary Awards and also various pronouncements by the Hon'ble Supreme Court and submitted that the applicant is entitled for disability pension, if the disability occurred during service and it has been assessed above 20%. Hence, the applicant should be granted disability pension @ 30% for life for his ID No. (i) **'PRIMARY HYPERTENSION'** which should be rounded off to 50% for life in terms of Government letter dated 31.01.2001.

4. The respondents have not disputed that the applicant suffered disability to the extent of 30% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that ID No. (i) '**PRIMARY HYPERTENSION**', assessed by RMB @ 30% for life is neither attributable to nor aggravated by military and ID No. (ii) '**HYPERLIPIDEMIA**', assessed by RMB @ 1-5% for two years is also 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), disability pension is granted to those persons whose disability is considered as attributable to and aggravated by Air Force Service, hence, applicant's claim for grant of disability pension has correctly been rejected.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB. The question before us is straight and simple i.e. is the disability of applicant attributable to or aggravated by military service?

6. 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)."

7. We have noted that the RMB has denied attributability to military service by writing a cryptic one liner in RMB i.e. 'Disability is constitutional in nature'. We don't feel that this cryptic and liner is adequate to justify denial of attributability and do justice to the applicant. Thus considering all issues and the law settled on this matter vide Hon'ble Apex Court decision in the case of **Dharamvir Singh** (Supra), we are of the considered opinion that the benefit of doubt in this case should be given to the applicant. Therefore, we are of the opinion that the disease of the applicant i.e. "PRIMARY HYPERTENSION" is to be considered as aggravated by military service and the applicant is considered entitled for grant of disability

element @ 30% for life for ID No. (i) 'PRIMARY HYPERTENSION'. However, we agree with the opinion of RMB on the other disease and consider ID (ii) 'HYPERLIPIDEMIA' @ 1-5% as NANA.

8. 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 and hence the applicant is entitled to the benefit of rounding off.

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

10. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The first disability of applicant i.e. 'PRIMARY HYPERTENSION' is to be considered as aggravated by military service. The respondents are directed to grant disability pension to the applicant @ 30% for life which would stand rounded off to 50% for life from the date of discharge. However, due to limitations as laid down for pension cases with huge delay by the Hon'ble Supreme Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the arrears of disability element will be restricted to three years prior to filing of the Original Application. The date of filing of Original Application is 03.10.2018. The

respondents are further 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: September, 2019
SB

(Justice Virender Singh)
Chairperson