

Court No. 1

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

Transferred Application No. 2 of 2023

Monday, this the 20th day of February, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

EX MC EAR II Bhusan Kumar (No. 198144-B)
House No. 631/8B, Gali No. 12
Near Brahmin Dharamshala, Adarsh Mohalla,
Maujpur, Delhi -110053

..... Applicant

Ld. Counsel for the Applicant: **Shri Vinay Pandey, Advocate,**
Holding brief of Devendra Kumar,

Versus

1. Union of India through, Secretary, Ministry of Defence
South Block, New Delhi.
2. Chief of Naval Staff, Integrated HQ of MoD (Navy)
Through PDPA, New Delhi - 110011.
3. Naval Pension Office C/o INS Tanaji
Sion Trombay Road, Mankhurd, Mumbai - 400088.
4. PCDA (N), No. 1 Co-Operge Road Colaba, Mumbai - 400001.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey,**
Central Govt Counsel.

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. O.A. No 1335 of 2019 (PB) has been received by this Tribunal by way of transfer from AFT (PB), New Delhi and re-numbered as T.A. No 02 of 2023. By means of the instant T.A., the petitioner had made the following prayers:-

“(a) Quash the Impugned Order No. PEN/600/D/BOD:04/2016/198144B dated 27.06.2016.

(b) Direct respondents to grant Disability element of Pension duly rounded off to 50% to the Applicant w.e.f. his date of discharge.

(c) Direct respondents to pay the due arrears of disability element of pension with interest@ 12% p.a. from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Navy on 29.01.1997 and was discharged from service on 11.04.2016 (AN) in low medical category after serving more

than 19 years of service. The Release Medical Board (RMB) assessed his disabilities (i) “**PRIMAY HYPERTENSION**” @ 30% (ii) “**DYSLIPIDEMIA**” @ 1-5% and (iii) “**OVER WEIGHT ICD No. E 66.9 1-5%** and composite disability qualifying for disability element was assessed 40% for life and opined all the disabilities as neither attributable to nor aggravated by military service (NANA). The applicant’s claim for grant of disability element was rejected by the respondents vide order dated 27.06.2016. Thereafter, applicant submitted a representation dated 24.03.2018 which was not replied by the respondents. Being aggrieved the applicant has filed instant Original Application for grant of disability element.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability element to the applicant is illegal. In this regard, he relied on the decision of the Hon’ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no

disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability element @ 40%. Learned counsel for the applicant also prayed for disability element be rounding off from 40% to 50%.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB had assessed the disabilities of the applicant (i) @30% (ii) @ 1-5% and (iii) @1.5% for life but opined that the disabilities are NANA and third disability has been assessed @ 1-5%. As such, his claim for disability element has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is liable to be dismissed.

5. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records.

6. The question which needs to be answered is whether the disabilities of the applicant are attributable to or aggravated by Military Service?

7. After going through the opinion of the medical board, we have noted that the first disability “Primary Hypertension ICD No I 10.0” has been opined as NANA by the RMB being in peace area. Third disability “Over Weight” @ 1-5%” is not connected with service and it is a life style diseased. Hence, we are of the opinion that benefit of doubt for third disability cannot be given to the applicant.

8. As far as first disability ‘Primary Hypertension’ and (ii) “**DYSLIPIDEMIA**” are concerned, we have noticed that the only reason for declaring the disease as NANA is that it has originated in peace area and has no close time association with Fd/CI Ops/HAA tenure. However, on further scrutiny, we have observed that this disability was detected in 2012, after about 15 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as NANA are 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. Thus, we are of the considered opinion that disabilities (i) “**PRIMARY HYPERTENSION**” and (ii) “**DYSLIPIDEMIA**” are to be considered as aggravated by military service because stress and strain of

military service in line with the law settled on this matter by the Hon'ble Apex Court in the case of ***Dharamvir Singh*** (supra).

9. The applicant will also be eligible for the benefit of rounding off of second disability from 30% to 50% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

10. Resultantly, the O.A. deserves to be partly allowed, hence partly allowed. The impugned order passed by the respondents rejecting disability element is set aside. The applicant's disability "Primary Hypertension" @ 30% for life, is to be considered as aggravated by military service and his disability element of pension is to be rounded off from 30% to 50% for life from the date of his discharge i.e. 11.04.2016. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 20 February, 2023
Bly/-