

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 23 of 2020**

Wednesday, this the 20th day of January, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Col Neeraj Kumar (No. IC-40414P)
 S/o Shri Ganga Prasad Yadav
 R/o Tower A-1 Casia, 301, MI Rustle Course,
 Gomtinagar Extension, Sector 6,
 Lucknow (UP) – 226010

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church road, new Delhi – 110001.
3. Appellate Committee of First Appeal through its Chairman, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi – 110001.
4. Second Appellate Committee on Pension through its Chairman, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi – 110001.
5. Additional Director General of Manpower Planning / MP-6(B), West Block-III, R.K. Puram, New Delhi-66.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (now Prayagraj) – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
 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) Issue/pass an order or direction setting aside the order/letter dated 26.02.2016, order/letter dated 15.02.2017 and order/letter dated 09.11.2017 passed/issued by Additional Director General personnel Services, Appellate Committee of First Appeal and Second Appellate Committee on Pension respectively, rejecting the claim of the applicant for grant of disability pension for the disabilities ‘TYPE-II’ Diabetes Mellitus’ and ‘Obesity’ after summoning the relevant original records; and directing the respondents to reconsider and grant disability pension extending the benefit of rounding off from the date of retirement including arrears thereof with interest.

(b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(c) Allow this Original Application with cost.”

2. The facts of the case, in brief, are that applicant was commissioned in the Army on 12.06.1982 and retired from service on 30.06.2016 (AN) on reaching the age of superannuation. The Release Medical Board (RMB) assessed his disabilities (i) **“TYPE II DIABETES MELLITUS” @ 20%** for life and considered it aggravated by military service and (ii) **“OBESITY” @ 1-5%** for life as neither attributable to nor aggravated by military service (NANA) and net assessment qualifying for disability pension with duration was 20% for life. His disability pension claim was rejected vide order dated 26.02.2016. Thereafter, applicant preferred first appeal on 10.08.2016

against rejection of disability claim which was rejected vide order dated 15.02.2017 and second appeal was also rejected vide order dated 09.11.2017. Being aggrieved, the applicant has filed the instant Original Application.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was commissioned in the Army and no disability was recorded at the time of his commissioning. Therefore, both disabilities of the applicant have been acquired during Army service. He further submitted that though the RMB has regarded his disability 'Type II Diabetes Mellitus' as aggravated by military service but the same has been overruled by a higher competent authority. In this regard, he relied on the decision of the Hon'ble Supreme Court in ***Dharamvir Singh v. Union of India and others (2013) 7 SCC 316*** and pleaded for both the disabilities to be considered attributable to or aggravated by military service. He further submitted that as per Para 173, 423 (c) of pension Regulations for the Army, 1961 and Regulation 53 of the pension Regulations for the Army, 2008 (Part-I), applicant is entitled for grant of disability pension as applicant's (i) disability is 20% for life and aggravated by military service. He prayed for disability pension @ 20% to be rounded off to 50% for life.

4. On the other hand, learned counsel for the respondents has filed the Counter Affidavit and submitted that though the RMB has assessed the disabilities of the applicant @ 20% composite, it has also opined that the (i) disability is aggravated by military service and (ii) disability is NANA. He further submitted that "**onset of (i) ID**

and (ii) ID was in March 2010 and September 2012 respectively, both in peace areas. ID (i), 'Type II Diabetes Mellitus' is a metabolic disorder of idiopathic origin with a strong genetic/familial preponderance and is therefore not attributable to service. However, benefit of doubt is given due to the dietary restriction and stress & strain of service and aggravation is conceded if the onset occurs while serving in FD/CI Ops/HAA or if the individual serves in such areas following onset. In the instant case, onset of ID (i) was in a peace station and after onset of ID (i) the veteran officer continued to service in peace areas. At the time of RMB, he was euglycaemic on medication with no evidence of target organ damage. Hence, ID (i) is conceded as neither attributable to nor aggravated by service (Para 26, Chap VI, GMO 2002 amendment 2008). ID (ii) obesity being a metabolic disorder influences strongly by dietary indiscretions and a sedentary lifestyle is conceded as neither attributable to nor aggravated by service". As such his claim for disability pension has rightly been rejected by the respondents. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

5. We have heard learned counsel for the parties. We have also gone through the Release Medical Board proceedings as well as the records.

6. This is a case where out of two disabilities of the applicant, the RMB has conceded (i) disability i.e. '**Type II Diabetes Mellitus**' as aggravated by military service. The same has been overruled by the competent authority on the ground that the onset of 'Type II Diabetes Mellitus' was while serving in peace area. However, we don't agree with this logic. RMB has conceded aggravation for 'Type II Diabetes Mellitus'. Date of onset of this disease is in the year 2010 and the applicant has retired in 2016, hence, this period of 06 years is adequate to cause aggravation. Additionally, the law on upholding the opinion of a medical board has already been settled by the Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993. Hence, we set aside the orders of competent authority and agree with RMB that this disease 'Type II Diabetes Mellitus' is aggravated by military service.

7. As far as (ii) disability '**Obesity**' is concerned, we are of the opinion that human body is complex and has huge inter-related issues. Thus the interconnectivity of various health markers is best understood by medical experts, hence we don't find any valid reasons to question the opinion of RMB declaring (ii) disability, 'Obesity' of the applicant as NANA and also as per RMB, assessment of this disability is below 20%, i.e. 1-5% only.

8. Thus in sum and substance we set aside the decision of competent authority overruling the opinion of RMB without physical examination of applicant by a higher Medical Board and restore the original opinion and findings of RMB.

9. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders are set aside and the original opinion of RMB is restored. The applicant's disability '**Type II Diabetes Mellitus**' is to be considered as aggravated by military service in line with RMB recommendations. The applicant is entitled to disability element of disability pension @ 20% for life, which shall be rounded off to 50% for life from the date of his discharge. However, as per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, arrears will be paid from 01.01.2016 only. 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.

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

Dated: January, 2021

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