

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 630 of 2022**Thursday, this the 02nd day of February, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 631646-N, Ex. JWO O.N. Trivedi, S/o Late Deena Nath Trivedi, R/o House No.- 206 ‘O’ Block, Yashoda Nagar, Post Office – Yashoda Nagar, District – Kanpur (U.P)-208011.

..... Applicant

Ld. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate.
Shri R.K. Singh, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi -110011.
2. The Chief of the Air Staff, Integrated HQ of Ministry of Defence (Air), Vayu Bhawan, New Delhi -110011.
3. Directorate of Air Veterans, Air Headquarters, AFRO Building, Subroto Park, New Delhi -110010.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P) -211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Alok Kumar Mishra**, Advocate
Central Govt. Counsel

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (a) *To issue /pass an order or direction to the Respondents to summon and quash the rejection order, if any, being arbitrary and illegal.*
- (b) *To issue/pass an order or direction to the Respondents to grant disability pension to the applicant @30% from the next date of discharge i.e 01.11.1993 and the benefits of rounding off which will be @50% for life from 01.01.1996.*
- (c) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (d) *Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in Indian Air Force on 21.10.1972 and discharged on 31.10.1993 in Low Medical Category BEE (Permanent) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at 14 Wing Air Force assessed his disability '**PRE EXCITATION SYNDROME WITH PSVT (416) OLD V-67**' @ 30% for one year but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The initial claim of disability was rejected by the respondents. The applicant preferred representation dated 07.05.2022 for obtaining copy of Release Medical Board proceedings which was provided vide letter dated 10.01.2022. It is in this perspective that the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded 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 in Air Force. The disease of the applicant was contracted during the service, hence it is attributable to or aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**PRE EXCITATION SYNDROME WITH PSVT (416) OLD V-67**' has been regarded as 30% for one year by RMB. However, since the disability was opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was not granted. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability element of disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 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)].
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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, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**PRE EXCITATION SYNDROME WITH PSVT (416) OLD V-67**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability has been firstly detected on 25.09.1985 whereas the applicant was enrolled in the year 21.10.1972 i.e. after about eight years of military service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for one year from the next date of his discharge.

8. As for as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to broad banding for period in question i.e. one year from 01.11.1993.

9. Since the applicant's RMB was valid for one year w.e.f. 01.11.1993, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

10. In view of the above, the **Original Application No. 630 of 2022** deserves to be allowed, hence, **allowed**. The impugned order, rejecting the applicant's claim for the grant of disability element of disability pension, is set aside. The disability of the applicant is held as aggravated by military service. The applicant is entitled to get disability element of disability pension @30% for one year from the next date of his discharge i.e. 01.11.1993. Respondents are directed to grant disability element of disability pension @30% for one years from the next date of his discharge i.e. 01.11.1993. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

(Vice Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 02 February, 2023

AKD/Ashok/-