

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 126 of 2023**Wednesday, this the 05th day of April, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ser No. 693554-T Ex Warrant Officer Manoj Kumar Sah son of Sita Ram Sah 190 Greater Kailash Tiwaripur, Shiwans Tenray, Jajmau, Distt- Kanpur Nagar, U.P -208010.

-----Applicant

Ld. Counsel for the Applicant: **Shri Keshav Sharma, Advocate**

Versus

1. Union of India through Secretary to Govt of India, Ministry of Defence, South Block, New Delhi - 110 011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhavan, New Delhi - 110 106.
3. The Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi - 110010.
4. The PCDA (Pension), Draupadi Ghat, Allahabad.
5. The JCDA (Air Force), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Kavita Misra,
Central Govt Counsel.**

ORDER (ORAL)

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

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:-

- “(i) Declare the disabilities “(i) PRIMARY HYPERTENSION (ii) SOMATIZATION DISORDER (iii) TYPE-II DIABETES MELLITUS” as aggravated by the Military Service.*
- (ii) Grant the disability element of pension to the Applicant @75% w.e.f. 01 Nov 2020 for life with all consequential benefits and*
- (iii) To issue / pass any other Order / direction as this Hon’ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant and render justice.”*

2. Counter affidavit filed by the respondents is taken on record.

3. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 16.07.1984 and was retired from service on 31.10.2020 (AN) in low medical category after serving 36 years of service. The Release Medical Board (RMB) assessed his disabilities (i) **“PRIMARY HYPERTENSION (OLD)”** @ 30% for life, (ii) **“SOMATIZATION DISORDER”** @ 40% for life and (iii) **“TYPE – II DIABETES MELLITUS”** @ 20% for life. The composite assessment of disabilities are @ 70% whereas the net assessment has been assessed NIL for life. The RMB has opined that all the

disabilities of the applicant were neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 23.06.2021. Thereafter, applicant submitted first appeal dated 16.08.2021 which is still pending and yet to be disposed of by the Respondents. Being aggrieved with denied by disability pension, the instant Original Application has been filed.

4. 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 pension 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 may be considered as aggravated by service and

applicant be granted disability pension @ 70% and rounded off to 75%.

5. On the other hand, learned counsel for the respondents submitted that though the RMB had assessed the disabilities of the applicant @70% for life but it opined that the disabilities are NANA and net assessment qualifying disabilities is NIL. He pleaded that Primary Hypertension is a multi factorial disorder with a genetic preponderance. It may be held aggravated if its onset is in Field/HAA/ CI Ops. Disability Somanatization and Diabetes Mellitus were also opined as NANA being a lifestyle disease and not related to military service. In the instant case, onset of disabilities occurred while serving in peace station and officer continued to serve in a peace station. As such, under the provisions of Rule 153 of Pension Regulations for IAF 1961 (Part 1), 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.

6. We have heard submissions of both the parties and also gone through the Release Medical Board proceedings as well as the records. 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 all the disabilities have been opined as neither attributable to nor aggravated by the RMB.

8. We have noticed that the only reason for declaring the disease as not attributable 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 on 08.07.2011, after about 25 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases as not attributable 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. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of **Dharamvir Singh** (Supra). Therefore, we consider the disease of the applicant as aggravated by Air Force service.

9. The applicant will also be eligible for the benefit of rounding off of disabilities from 70% to 75% 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 allowed, hence **allowed**. The impugned order passed by the respondents rejecting claim of disability element is set aside. The applicant is getting service element for the services rendered by him. The applicant's disabilities are to be considered as aggravated by Air Force service and his disability is rounded of from 70% to 75% for life from the next date of his retirement i.e. 31.10.2020. 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: 05th April, 2023

rk/-