

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 325 of 2021**Tuesday, this the 30th day of November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sgt. Bharrathari Nathawat (738724-H) IAF/P
 S/o Late Zorawar Singh Nathawat
 R/o Plot No. 50, Anand Nagar (Near Praveen School),
 New Loha Mandi Road, Post Ninder (Harmada),
 VKI Area, Sikar Road, District – Jaipur, Rajasthan, PIN-302013
 Applicant

Ld. Counsel for the Applicant: **Shri Rang Nath Pandey &**
Shri Rahul Pandey, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi.
3. Director of Air Veterans, AV (A&N Appeals), Air Headquarters, Air Force Record Office Building, Subroto Park, New Delhi – 110010.
4. Director of Air Veterans, Air Headquarters DP (A&N), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ram Saran Awasthi**,
 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) To quash the impugned orders dated 31.03.2021 passed by respondent No. 3 in Second Appeal of the applicant, vide letter No. Air HQ/99798/5/2nd Appeal/38/20/738724/DP/AV-III

dated 27.11.2019 passed by respondent No. 3 in First Appeal of the applicant vide letter No. Air HQ/99798/5/68/2019/738724/DP/AV-III (Appeals) and order dated 10.12.2014 passed by respondent No. 4 which was received by applicant vide letter No. Air HQ/99798/1/738724/05/15/DAV (DP/RMB) by which the respondents have rejected the Second Appeal, first Appeal and disability pension claim of the applicant respectively (Annexures No. A-1, A-2 & A-3 to Compilation No.I).

(b) To direct the respondents concerned to consider the claim of the applicant for grant of disability pension in accordance with law.

(c) To direct the respondent concerned to pay the dues of the disability pension which is applicable to the applicant in accordance with law.

(d) To issue any suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the present facts and circumstances of the case.

(e) To award the cost of the proceeding to the applicant.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Air Force on 14.05.1992 and was discharged from service on 31.05.2015 in low medical category on fulfilling the condition of his enrolment after rendering more than 23 years of regular service. The Release Medical Board (RMB) assessed his disability “**PRIMARY HYPERTENSION**” @ 30% for life and opined the disability as neither attributable to nor aggravated by military service. The disability pension claim of the applicant was rejected by the respondents vide order dated 20.11.2014. The applicant submitted first and second appeals which were rejected by the

respondents vide order dated 27.11.2019 and 31.03.2021 respectively. 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. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of RMB by higher competent authority was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of *Dharamvir Singh vs. UOI & Ors*, (2013) 3 SCT 778 and *Sukhvinder Singh vs. Union of India*, reported in (2014) 14 SCC 364 and pleaded that applicant be granted disability pension @ 30% duly rounded off to 50% in view of *Union of India vs. Ram Avtar*, decided on 10.12.2014 and Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "**PRIMARY HYPERTENSION**" has been regarded as 30% for life by RMB as neither attributable to nor aggravated by military service and not connected with service. Hence, as per Rule 153 of Pension Regulations for the Air Force, 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight 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 well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 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 invalidated 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. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for the reason by declaring the disease as NANA is that it is a self style related disorder. However, on further scrutiny, we have observed that disability was initially detected in the year 2008 after about 16 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disease as NANA is very brief and cryptic in nature and do not adequately explain the denial of attributability. Hence, we are inclined to give benefit of doubt in favour of the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 30% disability element for life from the date of discharge from service. The applicant will also be eligible for the benefit of rounding off of disability element from 30% to 50% for life in terms of the decision of Hon'ble Supreme Court in **Union of India and others v. Ram Avtar** (Civil Appeal No 418 of 2012 dated 10.12.2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The disability of the applicant is to be considered as aggravated by military

service. The applicant is entitled to disability element of pension @ 30% for life duly rounded off to 50% for life from the date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 02.07.2021. 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 : 30th November, 2021

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