

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 445 of 2023**Monday, this the 18th day of December, 2023

“Hon’ble Mr. Justice Anil Kumar, Member (J)”
“Hon’ble Maj. Gen. Sanjay Singh, Member (A)”

Smt. Suman Bajpai, Wife of Late Service No. 622714-L, Ex. Sgt. Umesh Kumar, S/o of Shri Basant Kumar, resident of House No. 64 Bandhuhar, Civil Lines, Unnao, U.P. Pin- 209801.

..... Applicant

Ld. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate.
Shri D.K. Dixit, Advocate
Maj. S.M. Mustafa, (Retd.), Advocate
Shri R.K. Singh, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi – 110011.
2. The Chief of the Air Staff, Integrated Headquarters, Ministry of Defence (Air), Vayu Bhawan, New Delhi -110011.
3. Director of Air Veterans, Air Headquarters, AFRO Building, Subroto Park, New Delhi -110001.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj – 211014.
5. Dy. CDA (Air Force), New Delhi -110010.

.....**Respondents**

Ld. Counsel for the Respondents. : **Dr. Chet Narayan Singh**, Advocate
Central Govt. Standing Counsel
Assisted by **Gp. Capt. Amulya Dayal**,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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 quash set aside the impugned order, vide which the disability element claim of the applicant was rejected.*
- (b) *To issue/pass an order or direction to the Respondents to grant disability element @30% for life which after rounding off will be @50% for life from the next date of retirement i.e. from 01 September 1993.*
- (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’s husband was enrolled in the Indian Air Force on 18.08.1978 and discharged on 31.08.1993 in Low Medical Category after rendering 15 years and 14 days of service. At the time of discharge from service of applicant’s husband, the Release Medical Board (RMB) held at 11 Wing, Air Force on 15.01.1993 assessed his disability “**DEPRESSION 311**” @30% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant’s husband’s claim for grant of disability element of disability pension was rejected vide letter dated 21.07.1994 which was

communicated to the applicant's husband vide letter dated 27.07.1994. The applicant's husband preferred application under Right to Information Act, 2005 on 09.10.2022 and the same was replied on 18.11.2022 and he has been provided copy of Medical Board proceedings. It is in this perspective that the applicant's husband has preferred the present Original Application.

3. During the pendency of Original Application Ex. Sgt. Umesh Kumar (Service No. 622714-L) has expired on 19.06.2023, hence, the applicant Smt. Suman Bajpai being his wife has been substituted as applicant in the Original Application.

4. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant's husband was found mentally and physically fit for service in the Indian Air Force and there is no note in the service documents that applicant's husband was suffering from any disease at the time of enrolment in Air Force. The disease of the applicant's husband was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant's husband be granted disability element of disability pension and its rounding off to 50%.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant's husband i.e. '**DEPRESSIVE 311**' has

been regarded as 30% for two years by RMB. However, since the disability was opined by RMB to be neither attributable to nor aggravated by Air Force service applicant's husband claim for grant of disability element of disability pension was rejected in terms of Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *"Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over"* the applicant's husband is not entitled to disability element of disability pension. He pleaded for dismissal of the Original Application. He pleaded for dismissal of the Original Application.

6. 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's husband is attributable to or aggravated by Air Force service?
- (b) Whether the applicant's husband is entitled for the benefit of rounding off of his disability element of disability pension,?

7. 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)]. [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)."

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant's husband only by endorsing that the disability '**DEPRESSION 311**' is neither attributable to nor aggravated (NANA) by service on the ground that "*The disability is the part of the individual's personality traits*", therefore, applicant's husband is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant's husband is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant's husband was enrolled in Indian Air Force on 18.08.1978 and the disability has started after more than 12 years of Air Force service i.e. on 04.04.1991. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant's husband in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the applicant's husband should be considered as aggravated by Air Force service.

9. As for as the benefit of Broad Banding is concerned, since benefit of broad banding / rounding off has been extended w.e.f. 01.01.1996, hence, prima facie the applicant's husband is not entitled to broad banding / rounding off for period in question i.e. two years from 31.08.1993.

10. Since the applicant's husband RMB was valid for two years w.e.f. 31.08.1993 it was required to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension but the applicant's husband has died on 19.06.2023, hence, it is not possible to conduct Re-Survey Medical Board of the applicant's husband. As such the applicant is entitled for the arrears of disability element of disability pension @30% for two years only from the next date of applicant's husband discharge.

11. In view of the above, the **Original Application No. 445 of 2023** deserves to be partly allowed, hence, **partly allowed**. The impugned order, rejecting the applicant's husband's claim for the grant of disability element of disability pension, is set aside. The disability of the applicant's husband is held as aggravated by Air Force service. The applicant's husband is entitled to get disability element of disability pension @30% for two years from the next date of his discharge. Respondents are directed to grant disability element of disability pension to the applicant's husband @30% for two years from the next date of his discharge and pay the arrears to the applicant accordingly. 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.

12. No order as to costs.

13. Group Capt. Amulya Dayal, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 18 December, 2023

AKD/-