

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 183 of 2020****Friday, this the 9th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Abhay Kant Abhay, At- Bhusauladanpur, PO- Mobarakpur, PS-Phulwari Sharif, Dist-Patna – 801505, State Bihar.

.... Applicant

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

Versus

1. Union of India through Secretary of defence New Delhi Shastri Bhawan, India.
2. Air Chief Marshall, Air, Air Headquarter, Directorate of Air Veterans, Subroto Park, New Delhi-110010.
3. Air Officer Commanding, Air Force Station Kanpur.
4. Office of the JT CDA Air Force New Delhi.

... Respondents

Ld. Counsel for the **Dr. Chet Narain Singh**, Advocate
Respondents.

ORDER

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

(a) Hon'ble Tribunal may kindly please to quash/set aside order dated 28.04.2017 & 31.05.2019 passed by the opposite party regarding denial of the disability pension to the applicant with the observation not attributable to army

service and not aggravated by military service is hereby annexed as contained as annexure no.1 with the O.A.

*(b) Hon'ble Tribunal may kindly please to direct the opposite party to provide disability pension to the applicant for the disease delusional disorder F-22 arises during air force service as observed by **RMB Board as 40% for life for disability** in favour of the applicant.*

*(c) Hon'ble Tribunal may kindly please to direct the opposite party to provide all medical documents records of treatment and RMB Board proceeding for the treatment regarding disease arises during air force service which has not been observed by the authority of CDA Pension Allahabad for disability pension to the applicant till yet without any proper reason though applicant having **40% disability for life**.*

(d) Any such other order or direction which this Hon'ble Court may deem fit and proper may also be passed on the basis of circumstances of the case in favour of the applicant.

(e) Allow the petition with cost in favour of the applicant

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 28.10.1997 and was discharged from service on 31.10.2017 after completion of more than twenty years of service in low medical category "**A4G3**"(P). He was brought before Release Medical Board (RMB) in which he was found to be suffering from '**DELUSIONAL DISORDER (F-22)**' @ 40% for life neither attributable to nor aggravated by Air Force Services. Disability pension claim of applicant was rejected vide order dated 11.02.2019. Thereafter, applicant's first and second appeals were also rejected vide orders dated 28.04.2017 and 31.05.2019 respectively being disability neither attributable to nor aggravated by my military service (NANA). It is in this perspective that this O.A. has been filed.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Indian Air Force in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease/disability prior to enrolment in the Air Force. His further submission is that though applicant's RMB conducted on 18.01.2017 has opined the aforesaid disability as neither attributable to service nor aggravated by Air Force service but as per applicant he feels that this disability is due to stress and strain related to rigors of Air Force service. He concluded by pleading for grant of disability element of pension to applicant.

4. On the other hand, Ld. Counsel for the respondents submitted in para 8 of counter affidavit that since applicant's disability has been considered by RMB as neither attributable to nor aggravated by military service, therefore, he is not entitled to disability element. His contention is that since the disability of applicant is NANA therefore his disability pension claim has rightly been denied by the respondents. He asserted that applicant is not eligible for grant of disability element in terms of para 153 of Pension Regulations for the Air Force, 1961 (Part-I) which envisages that disability element is applicable to those personnel who have been invalided out of service being in low medical category where sheltered appointment is not available. Concluding his arguments, learned counsel for the respondents submitted that this O.A. be dismissed on its merits.

5. Heard Ld. Counsel for the parties and perused the material placed on record.

6. We have gone through the RMB and found that applicant's disability '**DELUSIONAL DISORDER (F-22)**' has been assessed as neither attributable to nor aggravated by military service @ 40% for life. 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 213. 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 and appellate authorities have denied attributability/aggravation to the applicant for the reason that the disability has first arisen in modified field area having no close time association with field/high altitude area. Stress and strain may take place to incumbents in peace posting also. We find that the aforesaid disability was detected for the first time when applicant was posted in modified field area which is akin to field area. Applicant has suffered the aforesaid disability two years prior to the date of discharge which means that applicant had put in more than 15 years of service when the disability took place.

8. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently, and, unless proved to the contrary to be a consequences of military service in terms of para 9.2 of judgment in respect of **Dharamvir Singh** (supra). The benefit of doubt, therefore, shall be rightly extended in favour of the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir**

Singh (supra) and the disability of applicant should be considered as aggravated by military service.

9. We are clear that disability pension consists of two elements i.e. service element and disability element. Since the applicant is already in receipt of service pension, he is entitled to disability element @ 40% for life which shall be rounded off to 50% for life in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

10. In view of the above the applicant is held entitled to 40% disability element for life which shall stand rounded off to 50% disability element for life with effect from the date of his discharge.

11. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant shall be granted disability element @ 50% for life w.e.f. his date of discharge from service. Respondents are directed to pay aforesaid disability element alongwith arrears within three months from today.

12. Default will invite interest @ 8% p.a.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :09th July 2021
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