

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 761 of 2021**Thursday, this the 24th day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 639852-L Ex. JWO Chandrapal Singh Gour, Son of Late Subedar Singh, R/o House NO. 10, Mery Jesus School Road, Rampuram, Daheli, Sujanpur COD, Kanpur-208013 (UP).

..... ApplicantLd. Counsel for the: **Shri R. Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, Subroto Park, New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi-110010.

.....RespondentsLd. Counsel for the Respondents. : **Shri D.K. Pandey**, 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 :-

- (I) *The Hon'ble Tribunal may be pleased to set aside the rejection order dated 02.06.2020 (Annexure No. A-1).*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant Disability Element with effect from 01.08.2020 (Next date of Discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon'ble Tribunal may be pleased to further to grant benefit of rounding off disability pension @50 Percent in terms of Ram Avtar's Case.*
- (IV) *Any other appropriate or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 09.06.1983 and was discharged from service on 31.07.2020 in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at **Air Force Station, Kanpur** on **05.09.2019** assessed his disabilities (i) **'Carcinoma Oral Cavity Rt RMT Opt D00'** @15%, (ii) **'Hypothyroidism E 03.2'**@15% and (iii) **'Cataract RE opt H25'** @5%, **composite disabilities @30% for life**, and opined the first and third disabilities to be neither attributable to nor aggravated (NANA) by service and second disability to be attributable to service. On 02.06.2020 the applicant was informed that his claim for grant of disability element of disability pension was rejected. The applicant preferred First Appeal dated 28.04.2021 but of no avail. The applicant has also sent Legal Notice through his Counsel but of no

avail. It is in this perspective that the applicant has preferred the present Original Application.

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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence they all are attributable to and aggravated by military Service. Although the second disability has already been held as attributable to service by the RMB. He further pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of disability pension as well as arrears thereof, as applicant is also entitled to disability element of disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the first and third disabilities of the applicant have been regarded as NANA by the RMB and second disability has been regarded as attributable to service but it is less than 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of Pension Regulations for the Army, 2008 (Part I) and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He further

submitted that the applicant was noted to be chain smoker, chronic alcoholic and chronic tobacco chewer vide opinion of Radiation Oncologist dated 08.10.2016. He was also noted to have radiation induced hypothyroidism vide opinion of Radiation Oncologist dated 27.11.2018. He pleaded for dismissal of Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings as well as the records. The sole question which needs to be answered by us is whether the first and third disabilities of the applicant are attributable to or aggravated by military service?

6. We have given our thoughtful consideration to the issues raised by the learned counsel for the applicant. On careful analysis, we find that chain smoking, chronic alcohol consumption and habitual tobacco chewing are modifiable, independent risk factor for contracting first and third diseases. Chain Smoking, chronic alcohol consumption and tobacco chewing lead to being contracting first and third diseases.

7. It is also well known that all efforts are made by Army doctors and the organization to help a soldier who has become a victim of chain smoking, chronic alcohol consumption and tobacco chewing and only when all efforts fail the soldier is discharged from service.

8. Further, Para 6 of Chapter – V of Guide to Medical Officers (Military Pensions), 2002 provides that *“Compensation cannot be awarded for any disablement or death arising from intemperance in the use of alcohol, tobacco or drugs, or from sexually transmitted diseases, as these are matters within the member’s own control. It follows that where alcohol, tobacco or drugs or sexually transmitted diseases have aggravated an accepted disability, it is necessary to exclude the effect thereof in assessing the disablement ascribable to service condition.”*

9. In view of above, as far as attributability of the of disability is concerned, we agree with the opinion of the RMB that first and third diseases are neither attributable to nor aggravated by military service.

10. Further, second disease i.e. **‘Hypothyroidism E 03.0’** has been held as attributable to service by the RMB but assessed @15% (less than 20%). The Hon’ble Supreme Court in Civil Appeal No 10870 of 2018 ***Union of India & Ors vs Wing Commander SP Rathore***, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the

disability pension, there would be no question of rounding off.”

11. Considering all issues, we are of the considered opinion that Ld. Counsel for the applicant has failed to make out any case in his favour. Thus considering that due process has been followed by Army in discharging the applicant from service, we are not inclined to interfere with this process or provide any other relief to the applicant.

12. In view of the above, the **Original Application No. 761 of 2021** deserves to be dismissed, hence **dismissed**.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 24 March, 2022

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