

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 606 of 2021**Saturday, this the 21<sup>st</sup> day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 677792-R Ex JWO/MT Fit Vinod Kumar Singh  
S/o Shri Rama Nand Singh  
R/o Village : Ram Nagar (Dorwa Mode), Post – Sirsa,  
District : Prayagraj-212305 (UP)

..... Applicant

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

Versus

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

..... Respondents

Ld. Counsel for the Respondents : **Ms. Amrita Chakraborty**,  
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:-

“(I) The Hon'ble Tribunal may be pleased to set aside the rejection order dated 25.08.2021 (Annexure No. A-1).

(II) The Hon'ble Member may be pleased to direct the respondents to grant disability element with effect from

01.11.2020 (Next date of Discharge) alongwith its arrears and interest thereon at the rate of 18% per annum.

(III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 75 percent in terms of Ram Avtar's case.

(IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem Just and proper in the nature and circumstances of the case."

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 09.09.1983 and was discharged from service on 31.10.2020 (AN) in low medical category on attaining the age of superannuation after rendering total 37 years and 53 days of service. The Release Medical Board (RMB) assessed his disabilities (i) **"PRIMARY HYPERTENSION"** @ 30% for life and (ii) **"SCHIZOPHRENIA"** @ 40% for life, composite disability @ 60% for life and opined the disabilities as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 16.08.2021. 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. The RMB has assessed applicant's disabilities (i) **"PRIMARY**

**HYPERTENSION**” @ 30% for life and (ii) **“SCHIZOPHRENIA”** @ 40% for life, composite disability @ 60% for life and opined the disabilities as neither attributable to nor aggravated by military service (NANA). He placed reliance on the judgment of the Hon’ble Apex Court in the case of **Union of India and Another vs. Rajbir Singh** (2015) 12 SCC 264, decided on 13.02.2015 and **Dharamvir Singh vs. Union of India & Ors**, (2013) AIR SCW 4236 and pleaded that applicant be granted disability pension @ 60% duly rounded off to 75% in view of Govt. of India letter dated 31.01.2001.

4. On the other hand, Ld. Counsel for the respondents contended that both disabilities of the applicant have been assessed composite @ 60% for life by RMB as neither attributable to nor aggravated by military service and onset is in peace area and not connected with service. Hence, as per Para 153 of Pension Regulations for the Air Force 1961 (Part-1), applicant is not meeting primary conditions for grant of disability pension, hence, he is not entitled for disability pension.

5. Learned counsel for the respondents placed reliance on the judgment of the Hon’ble Apex Court in Civil Appeal No. 7672/2019, **Ex Cfn Narsingh Yadav vs. Union of India & Ors**, decided on 03.10.2019 and AFT (PB), New Delhi judgment in OA No. 1255/2017, **Ex AC Vinod Kumar vs. Union of India & Ors** dated 11.03.2020 by which case of the applicant for ID Schizophrenia @ 60% as NANA was dismissed. In another similar matter, AFT (PB), New Delhi vide its judgment in OA No. 929/2018, **Ex LAC Pankaj Rawat vs. Union**

**of India & Ors** dated 06.03.2020 has dismissed the case of the applicant for ID Schizophrenia assessed @ 40%. She pleaded for dismissal of the O.A being devoid of merit.

6. 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 disabilities of applicant attributable to or aggravated by military service?

7. As far as second disability “**SCHIZOPHRENIA**” of the applicant is concerned, though it has been assessed @ 40% for life and considered it neither attributable to nor aggravated by military service but it is well known fact that mental disorders can escape detection at the time of enrolment hence, benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment and therefore, applicant is not entitled disability element for this disability as per **Narsingh Yadav** case (supra) in which it has been held by the Hon’ble Supreme Court that mental disorders cannot be detected at the time of recruitment and their subsequent manifestation during service does not entitle a person for disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board.

Relevant part of the aforesaid judgment is as given below:-

*“20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but,*

*mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that 'Paranoid Schizophrenia (F 20.0)' is presumed to be attributed to or aggravated by military service.*

*21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the Invaliding Medical Board."*

8. As far as first disability of the applicant "**PRIMARY HYPERTENSION**", assessed @ 30% for life is concerned, 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 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)."*

9. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant for his first disability for the reason by declaring the disease as NANA is that it originated in peace area and has no close time association with Fd/HAA/CI Ops service. However, on further scrutiny, we have observed that this disability was initially detected in the year 2017 after about 34 years of service. We are, therefore, of the considered opinion that the reasons given in RMB for declaring the disease as NANA 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 as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his first disability "**Primary Hypertension**" should be considered as aggravated by military service.

10. In view of the above, applicant is held entitled disability element @ 30% for life for his first disability "**Primary Hypertension**" from his date of discharge from service. The applicant will also be eligible for the benefit of rounding off of

disability element 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).

11. As a result of foregoing discussion, the O.A. is **partly allowed**. The impugned order passed by the respondents is set aside. The first disability of the applicant "**Primary Hypertension**" 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 next date of discharge from service. The respondents are directed to grant disability element @ 50% for life from the next date of discharge from service. 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.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: May, 2022

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