

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 1754/2018**

**HFO GIRIJA SHANKAR SHUKLA (RETD)** ... Applicant

*Versus*

**Union of India & Ors.** ... Respondents

**For Applicant** : Mr. Praveen Kumar, Advocate

**For Respondents** : Mr. Prabodh Kumar, Advocate-on-Record

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDER MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under: -

*“(a) Quash and set aside the impugned letter No. Air HQ/99798/1/609101/DAV/DP/CC dated 29 Aug 2018.*

*“(b) Direct Respondents to grant Disability Pension @ 50% after rounding off benefit from 11%-14% for life at as assessed by reassessment medical board to the applicant with effect from 01 Feb 2013 i.e., the date of discharge from service with interest @ 12% p.a. till final payment is made.*

*(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

### **BRIEF FACTS**

2. The applicant HFO Girija Shankar Shukla (Retd.) was enrolled in the Indian Air Force on 23.05.1973, and discharged from service on 31.01.2013 on attaining the age of superannuation in the rank of Honorary Flying Officer. The applicant had served a total of 39 years and 254 days of regular service.
3. The Release Medical Board (RMB) vide AFMSF-18, dated 23.03.2012 found the applicant to be released in medical category A4G1 (SHAPE-1) free from any disease/disability. The applicant suffered the disease of **CARCINOMA GLOTTIS** post discharge. The origin of the disease was in March 2013.
4. The applicant had earlier filed OA 1264/2016 before this Tribunal seeking re-assessment of his medical condition.
5. Since the applicant at the time of discharge was not suffering from any disease/disability in January 2013 and retired in A4G1 (SHAPE-1) category and later on diagnosed with **CARCINOMA GLOTTIS** in March 2013, this Tribunal took note of this fact and directed the respondents to conduct the Re-

Survey Medical Board, with the help of oncology and ENT expert, vide order dated 07.03.2018.

6. The Re-Survey Medical Board (RSMB) of the applicant held on 04.06.2018 assessed the disability CARCINOMA GLOTTIS as neither attributable to nor aggravated by the Air Force service at @ 15% for life and denied the claim for disability element of pension.

7. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

### CONTENTIONS OF THE PARTIES

8. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully medically fit and no note was made in his medical records that the applicant was suffering from any disease at that time.

9. The learned counsel for the applicant submitted that the applicant already had the symptoms of the present disability i.e., CARCINOMA GLOTTIS while the applicant was in active service in the month of January

2013 and the RMB had wrongly assessed the medical category of the applicant at the time of discharge.

10. The learned counsel for the applicant submitted that the applicant had earlier filed an OA 1264/2016 for the grant of disability element of pension with the interim relief seeking direction to the respondents for conducting the RAMB.

11. The learned counsel for the applicant submitted that the interim relief in OA 1264/2016 was granted to the applicant and the respondents were directed to conduct the RSMB of the applicant in order to re-assess the attributability or aggravation of the ID Carcinoma Glottis, which assessed the disability as neither attributable to nor aggravated by the Air Force service at @ 15% for life vide RSMB dated 04.06.2018 in compliance of order dated 07.03.2018 of this Tribunal.

12. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India and Ors. 2013 AIR SCW 4236*, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the

Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court *that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.* The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service. Referring to Rule 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the learned counsel for the applicant submitted that the applicant should have been given the benefit of doubt and the disability should have been conceded as aggravated by service only. The learned counsel further submitted that the Tribunal has already granted disability pension to many similarly situated persons.

13. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in *UOI v. Rajbir Singh (Civil Appeal No. 2904/2011)* whereby it was held that the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by

military service. The learned counsel submitted that there is admittedly neither any note in the service records of respondents at the time of the applicant's entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the applicant was found to be suffering from could not have been detected at the time of his entry into service, *and UOI and Other v. Ram Avatar (C.A. No. 418/2012 dated 10 December 2014)*, whereby the benefit of rounding off of the disability pension was granted.

14. *Per contra*, the learned counsel for the respondents submitted that the applicant had filed an OA 1264/2016 before this Hon'ble Tribunal and in compliance of the order of this Hon'ble Tribunal dated 07.03.2018, the Re-Survey Medical Board was conducted at Base Hospital Delhi Cantt vide AFMSF-16 dated 04.06.2018 and the applicant's ID- Carcinoma Glottis was considered as Neither attributable to nor aggravated by service with the following reason:

*"Smoking of tobacco and consumption of alcohol are the top two commonest causes of carcinoma glottis. There is no ineffective, autoimmune or traumatic aetiology for the disease. Causal connection to service conditions cannot be established in this case. This carcinoma is not listed as one attributed service in GMO 2002, amended 2008). His disability was assessed @ 15% for life. Net assessment for disability qualifying element for disability pension is NIL."*

15. The learned counsel for the respondents, in view of the reassessment percentage of the RSMB below 20% i.e., 15% for life, placing reliance on Rule 153 of Pension Regulations for IAF, 1961 (part-1) prayed for dismissal of the OA.

### ANALYSIS

16. We have heard the learned counsel for both the parties at length and have gone through the records produced before us. We find that the disability ID CARCINOMA GLOTTIS suffered by the applicant has been re-assessed by the RAMB dated 04.06.2018 as NANA at @ 15% for life. The instant OA requires adjudication of the following two questions i.e.,

- a) Whether the disability of CARCINOMA GLOTTIS of the applicant is attributable to or aggravated by the Air Force? And,
- b) whether the applicant is entitled for the benefit of rounding off of the disability element of disability pension?

17. Pension Regulations for the Air Force, 1961 (Part-1), Rule 153 deals with primary conditions for the grant of disability pension. As per Rule 153 of Pension Regulations for IAF, 1961 (part-1), *"Unless otherwise specifically provided, a disability pension may be granted to an individual who is*

*invalidated from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed 20% or over"*

18. Qua the disability Carcinoma Glottis, it is essential to advert to Para 12 of the Guide to Medical Officers, 2008, which provides as under:

*"12. Malignancies Not Attributable and Not Aggravated Tobacco related cancers in smokers and tobacco users e.g., carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g., CML where Ph chromosome identified."*

19. Para 12 of the GMO, 2008 explicitly specifies that any malignancy that is caused due to smoking or consumption of tobacco substance are neither attributable to nor aggravated by military service.

20. The applicant had earlier filed OA 1264/2016 wherein the medical records were annexed by the applicant. The medical document dated 22.01.2013 placed on record in the said OA shows that the applicant was advised to stop smoking. The finding of the RSMB also says that the applicant had the history of smoking and chewing tobacco for over 20 years. Medical records dated 27.02.2013 and 03.03.2013 notes that the applicant was chewing tobacco for past 20 years and is a smoker for past 25-30 years respectively.

21. The medical history of the applicant available on record proves that the applicant was a habitual smoker and was in habit of chewing tobacco substance.

The medical literature available in the public domain (Williamson AJ, Bondje S. Glottic Cancer. [Updated 2023 Jul 17]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2024 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK558979/>) also suggests that smoking and consumption of tobacco are the primary causes of glottic cancer. The medical literature cited above specifically provides as follows:

*“There has long been an association between the consumption of smoking and excessive alcohol consumption and the occurrence of glottic and laryngeal squamous cell carcinoma. Rates of laryngeal cancer are 15-30 times higher in smokers than non-smokers, with the inclusion of heavy alcohol intake having a multiplicative effect on the risk of malignancy. Moreover, continued smoking following diagnosis and treatment is associated with poorer survival outcomes and a higher rate of recurrence.”*

22. The applicant in the present case was in the habit of chewing tobacco products and smoking for past 25-30 years and these key facts corresponds with the primary causes of the glottic cancer. The finding of the RSMB deciding the non-attribution and non- aggravation to military service of the ID Carcinoma Glottis is correct and there is no infirmity in the RSMB proceeding. Since the applicant's case do not meet the twin conditions as enumerated under Regulation 153 of the Pension Regulation for the Air Force, 1961 (Part-I), the

applicant is therefore not entitled to the disability element of the pension for the disability of Carcinoma Glottis.

### CONCLUSION

23. The O.A. 1754 of 2018 is, therefore, dismissed being devoid of merit.
24. There is no order as to costs.

Pronounced in the open Court on this <sup>HK</sup> 26 day of September, 2024.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

  
[REAR ADMIRAL DHIREN VIGN]  
MEMBER (A)

/LR-P/