

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 691 of 2017

Thursday, this the 28th day of February, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 694619 G Ex. Sgt. Shauvir Singh, S/o Late Sri Baran Singh, R/o Village Rasulpur, P.O. Babugarh Cantt., District Ghaziabad (U.P.).

..... Applicant

Ld. Counsel for the : **Shri K.K. Misra**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Air Staff, Air Headquarters, New Delhi.
3. Officer-in-Charge, Air Force Records Office, Subroto Park, New Delhi-110010.
4. Dy. C.D. A. (Air Force), New Delhi.

.....Respondents

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

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) *To direct the respondents to grant 20% disability pension to the applicant from the date of his discharge from the service, ie 1 Feb 2008.*
- (ii) *To direct the respondents to thereafter, round off this percentage of disability pension to 50% as per the policy on the subject and pay the arrears of disability pension with interest as applicable.*
- (iii) *Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*
- (iv) *Cost of the application be awarded to the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 31.01.1985 and was discharged from service on 31.01.2008 in Low Medical Category CEE (Permanent) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Station Medicare Centre, Air Force Station Yelahanka, Bangalore on 07.03.2007 assessed his disability '**SEIZURE DISORDER ICD NO. G-40**' @ 20% for life but opined the disability to be neither attributable to nor aggravated by Air Force service (NANA) and Constitutional in nature. The initial

claim of disability was rejected on vide order dated 09.06.2012. The applicant has approached the authority concerned viz. Air Force Record Office, Subroto Park, New Delhi for grant of disability pension but did not receive any reply from their office. It is in this perspective that the applicant has preferred the present O.A.

3. Ld. Counsel for the applicant pleaded that at the time of enrolment, the applicant was found medically and physically fit for service in the Air Force and there was no note in the service documents that he was suffering from any disease at the time of enrolment in the Indian Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Services. The Ld. Counsel for the applicant further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB, hence the applicant is not entitled to disability pension. He further pleaded that since the applicant was discharged from service on

attaining the age of superannuation with effect from 01.02.1985 and the RMB has opined to be released in Low Medical Category A4G4 (Permanent), hence his claim for grant of disability pension was not conceded. He pleaded for dismissal of the O.A.

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 questions which need to be answered are of three folds :-

(a) Whether the disability of the applicant is attributable to or aggravated by Air Force Services?

(b) Whether the applicant is entitled for grant of disability pension or not and if yes from which date?

(c) Whether the applicant is entitled for the benefit of rounding off of his disability pension?

6. 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)."

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disability '**SEIZURE DISORDER ICD NO. G-40**' is (NANA)

as the disease is constitutional in nature. This reason endorsed by the RMB is cryptic in nature. This kind of reason doesnot reflect the complete truth on this matter. The applicant was enrolled in Air Force on 30.01.1985 and the disability was detected for the first time in the year 1990 i.e. after more than 05 years of Air Force service. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service.

8. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of

engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the Hon'ble Apex Court has observed as under:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or

restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (supra), we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the O.A.

11. In view of the above, the Original Application No. 691 of 2017 deserves to be allowed, hence **allowed**. The respondents are directed to grant disability element to the applicant @ 20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of this O.A. The date of filing of this O.A. is 27.11.2017. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha) **(Justice S.V.S. Rathore)**
Member (A) **Member (J)**

Dated: February, 2019

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