

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 190 of 2019**Friday, this the 12<sup>th</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Damodar Prasad Singh (Ex MWO No. 600723K),  
R/o House No 16A/6G, New Market, Behind Shamim  
Market, Shivala, Bamrauli, Allahabad- 211012.

.....Applicant

Ld. Counsel for : **Shri Ashok Kumar and**  
Applicant **Shri Om Prakash Kushwaha**

Versus

1. Union of India through Secretary, Ministry of Defence, ,  
South Block, Government of India, New Delhi- 110011.
2. Incharge Records/Air Headquarters, Directorate of AIR  
Veterans Subroto Park, New Delhi - 110010.
3. Deputy Controller of Defence Accounts (Air Force), New  
Delhi – 110010.

.....Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri,**  
Respondents **Central Govt Counsel**

## ORDER

### “Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(I). This Hon’ble Court may graciously be pleased to quash the impugned order dated 01.01.2018 (Annexure No A-3) Passed by Respondent No 2 rejecting the disability pension of applicant.*

*(II). This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears to the applicant w.e.f. 30.04.2007 towards his disability. (i) Low Backache (old) 11-14% (ii) Hypothyroidism (old) 16% for life (Composite Assessment 30%).*

*(III). This Hon’ble Court may further be pleased to pass such other and /or further order as deem fit, proper and necessary in the circumstances of this case.*

*(iv). Award costs to the applicant.*

2. The undisputed factual matrix on record is that the applicant was enrolled in Air Force on 07.10.1967 and on completion of terms of engagement, he was discharged from service on 01.05.2007 on attaining the age of superannuation. At the time of discharge Release Medical Board of the applicant held on 24.05.2006 and the individual was downgraded to Low Medical Category A4G3 (Permanent) for diseases (i) “**Low Backache @s 11-14%** and (ii) “**Hypothyroidism @ 20%**”, and both composite disabilities assessed as 30% for life and opined it as neither attributable to nor aggravated by Air Force service (NANA). The applicant approached the respondents for

grant of disability pension but the same was rejected vide letter dated 18.07.2006. The applicant preferred appeal which too was rejected vide letter dated 01.01.2018. 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 Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Indian Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that applicant has rendered more than 39 years of service and he is in receipt of service pension. Composite disabilities of the applicant @ 30% for life has been regarded as NANA by the RMB, Reason- constitutional in nature and disability qualifying element for disability pension was NIL, hence applicant is not entitled disability pension in terms of

Regulation 153 of Pension Regulations for the Indian Air force, 1961, Part- I. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records. The questions which needs to be answered are of two folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the 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 disabilities “**Low Backache**” and “**Hypothyroidism**”, are neither attributable to nor aggravated (NANA) by service on the ground of constitutional in nature. We are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace and Field both Stations have their own pressures of rigorous Air Force training and associated stress and strain of Air Force Service. The applicant was enrolled in Indian Air Force on 07.10.1967 and the disability has started in the year 1985 after more than 18 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 Air Force 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 10<sup>th</sup> 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 invalidated 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. As such, in view of the decision of Hon'ble Supreme Court in the above case, we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded

off to 50% for life may be extended to the applicant from three years prior to filing of O.A.

10. In view of the above, the Original Application No. 190 of 2019 deserves to be allowed, hence **allowed**. The impugned orders rejecting claim of disability pension dated 18.07.2006 and 01.01.2018 are set aside. The disability of the applicant is held as aggravated by Air Force Service. The respondents are directed to grant disability element to the applicant @30% for life which would be rounded off to 50% from three years prior to filing of O.A. The O.A. was filed on 27.11.2018. 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 @ 8% per annum till actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
**Member (A)**

(Justice Umesh Chandra Srivastava)  
**Member (J)**

Dated : 12 February, 2021

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