Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 214 of 2020

Wednesday, this the 27th day of January, 2021

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"

No 791243-R, Sgt, Jitendra Kumar Pandey, S/O Rajnish Prakash Pandey, Resident of H. No. 596B, Raj Colony, Husainabad, District – Jaunpur, Pin – 222002, Uttar Pradesh.

….. Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi,** Advocate.

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Air Force), New Delhi-110011.

2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.

3. Director, Dte of Air Veteran, Subroto Park, New Delhi, Delhi-110010.

4. Office of Joint CDA (Air Force), New Delhi, C/o Air Force Central Accounts Office, Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Shri RC Shukla,** 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.

A. To issue./pass an order or directions to set-aside/quash the order no. Air HQ/99798/5/215/219/791243/DP/AV-III dated 28 November 2019 and order no. Air HQ 99798/1/791243/11/17/DAV(DP/RMB) dated 17 August 2018 passed by respondent no. 3.

B. To issue/pass an order or directions to the respondents to Grant disability element of disability pension @30% from date of discharge i.e. 30.11.2017 along with 12% interest on arrear in light of Hon'ble Apex Court judgment.

C. To issue/pass an order or directions to the respondents to grant subsequently benefit of rounding off/broad banding off disability pension @30% to the applicant from the date of discharge i.e. 30.11.2017 along with 12% interest on arrear in light of Hon'ble Apex Court judgment and Government letter dated 31.01.2001.

D. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

E. To allow this original application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in Indian Air Force on 18.11.1997 and was discharged on 30.11.2017 in Low Medical Category (A4G3) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Air Force Station, Jodhpur on 08.03.2017 assessed his disability '**PRIMARY HYPERTENSION** @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 17.08.2018. The applicant preferred First Appeal which too was rejected vide letter dated 28.11.2019. 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 contacted 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 disability of the applicant @ 30% for life has been regarded as NANA by the RMB, Reason- An life style related disorder and Onset in Nov 2016 in peace station 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 disability '**PRIMARY HYPERTENSION'** is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in November, 2016 while posted in Peace location. 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 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 18.11.1997 and the disability has started in November 2016 after more than 19 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 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.*
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> *5. We have heard Learned Counsel for the parties to the lis.*
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> *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.*
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> *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.*
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> 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 the date of discharge i.e. 01.12.2017.

10. In view of the above, the Original Application No. 214 of 2020 deserves to be allowed, hence **allowed**. The impugned orders dated 17.08.2018 and 28.11.2019 are set aside. The disability of the applicant is held as aggravated by Air Force Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% from the date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the date of discharge. 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.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 27 January, 2021
Ukt/-