

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 96 of 2019

Wednesday, this the 20nd day of January 2021

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

No. 229045K Ex Hony Fy Officer (MWO) Gaya Prasad Pandey, S/o late Jagannath Pandey, R/o Vill- Katkabali, PO-Ajgara, District – Pratapgarh (U.P.)

.....Applicant

Ld. Counsel for : **Shri Parijaat Belaura,**
Applicant **Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, , New Delhi.
2. Officer in Charge, Air Force Record Office, Subroto Park, New Delhi - 110010.
3. The Joint Controller of Defence Accounts (Air Force), Subroto Park, 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). To grant disability pension @ 40% and round of the same to 50% giving the benefit of Govt of India, Min. of Def. letter dated 31.01.2001, w.e.f. date of discharge of applicant i.e. 31.05.1996.

(II). To pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 31.05.1996 till it is actually paid.

(III). Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.

2. The undisputed factual matrix on record is that the applicant was enrolled in Air Force on 19.03.1960 and on completion of terms of engagement, he was discharged from service on 31.05.1996 (AN). At the time of discharge Release Medical Board of the applicant held on 21.08.1995 and the individual was downgraded to Low Medical Category CEE (Permanent) for diseases **“Ischemi Heart Disease” (IHD)** and **“Primary Hypertension”**, and both composite disabilities assessed as 20% for two years and opined it as neither attributable to nor aggravated by Air Force service (NANA). Claim for grant of disability pension was rejected by PCDA (P), Allahabad vide letter dated 07.02.1997 on the ground of disability being NANA. Applicant wrote various letters to respondents for grant of disability pension but the same were

not replied. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in Air Force in medically fit condition and, thereafter, he was discharged from service after about 36 years on completion of terms of engagement. At the time of discharge, Release Medical Board was held and the applicant was placed in Low Medical Category for diseases “**Ischemic Heart Disease**” (IHD) and “**Primary Hypertension**” and both composite disabilities assessed as 20% for two years and opined it as NANA. He pleaded that disability of the applicant be considered as a result of stress and strain of Air Force service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered both composite disabilities to the extent of 20% for two years, but he submitted that competent authority while rejecting the claim of the applicant has viewed that disability was found as neither attributable to nor aggravated by Air Force service, therefore, as per Rule 153 of Pension Regulations for IAF, 1961 (Part-I), the primary conditions for

grant of disability pension are 'unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over'. In the instant case, the disabilities "**Ischemi Heart Disease**" (IHD) and "**Primary Hypertension**" being neither attributable to nor aggravated by Air Force service, claim for grant of disability pension has rightly been rejected. However, applicant has been granted service pension and other retiral dues admissible to him.

5. We have heard Shri Parijaat Belaura, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors*** (supra). 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)."

8. After considering all issues we have noted that the only reason given by Release Medical Board for denying Attributability for diseases are that they are constitutional in nature hence not connected with service. We find that when the applicant joined Air Force, he was medically examined

and found to be in Shape-I and the aforesaid disabilities were contracted after about 27 years of service which resulted in the downgrading of his medical category. In absence of any evidence on record to show that the applicant was suffering from disability or any ailment at the time of entering in service, it will be presumed that deterioration of his health has taken place due to service conditions and the applicant is entitled to the relief as per the above judgments of the Hon'ble The Apex Court in the case of ***Dharamvir Singh*** (Supra). Therefore, we consider the diseases of the applicant as aggravated by Air Force service.

9. 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."*

10. 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 @20% for two years to be rounded off to 50% for two years may be extended to the applicant from the date of discharge i.e. 01.06.1996.

11. Since the applicant's RMB was valid for two years w.e.f. 01.06.1996, hence, the respondents will now have to conduct a fresh RSMB for him.

12. In view of the above, the Original Application No. 96 of 2019 deserves to be allowed, hence **allowed**. The impugned order dated 07.02.1997 is set aside. The disabilities of the

applicant are held as aggravated by Air Force service. The applicant is held to be entitled to disability pension @20% for two years from the date of his discharge i.e. 01.06.1996. Respondents are directed to grant disability element to the applicant at the rate of 20% for two years which would stand rounded off to 50% for two years from the date of discharge i.e. 01.06.1996. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 20 January, 2021

UKT/-