

Court No. 1 (E. Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 489 of 2021**

Thursday, this the 20th day of January, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex. BC No. 18400-N Sqn. Ldr. Mahendra Pal Singh, S/o Late Sheo Singh, R/o Plot NO. 12 (H No. 84), Bhabha Nagar, Sanigawan Road, Near Hardutt School, Kanpur (UP).

..... Applicant

Ld. Counsel for the : **Shri S.N. Gaherwar**, Advocate and
Applicant **Shri Ajit Singh Gaherwar**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Air Staff, Air Head Quarters (Vayu Bhawan), Rafi Marg, New Delhi-110011.
3. Under Secretary/D (Pension & Policy) room No. 220A ‘B’ Wing Sena Bhavan, Ministry of Defence, Government of India, New Delhi-110011.
4. Directorate of Air Veterans, Air HQ (SP) First Floor, SMS Building, Subroto Park, New Dehli-110010.
5. Director of Air Veterans, Director III (DP) Air hQ Vayu Bhavan, New Delhi-110106.

.....**Respondents**

Ld. Counsel for the : **Ms. Appoli Srivastava**, Advocate
Respondents. 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:-

- I. *To Grant the Disability Pension on the ground of Disability attributable to or aggravated by military service conditions of applicant which leads to suffer permanently disability and the element of disability pension may be granted from the date of invalidated out from service with effect from 01.01.2003, further the arrears of disability pension be paid to the applicant within stipulated period with interest after quashing the impugned medical board proceedings which has assessed disability 15 to 19%. The copy of impugned categorization of medical board report is annexure No. 1 this OA.*

2. Briefly stated, applicant was commissioned in Indian Air Force on 13.07.1964, branch commissioned on 20.09.1986 and was retired on 31.12.2002 in Low Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Kanpur on 05.10.2002 assessed his disabilities '**MENIERE'S DISEASE (OLD)**' @ 15-19% for two years (ii) '**HYPERTENSION (OLD V-67)**' @30% for two years, **composite disabilities @30% for two years** but opined the disabilities to be neither attributable to nor aggravated (NANA) by Air Force service. The applicant's claim for grant of disability pension was rejected vide letter dated 05.05.2004. The applicant

preferred representation dated 06.08.2021 which too was rejected vide letter dated 02.09.2021. 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/commission, the applicant was found mentally and physically fit for service in the Indian Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The diseases of the applicant were contacted during the service, hence they are 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 element of disability pension as well as arrears thereof. He 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 entitled to disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant have been regarded as 30% for two years by RMB. However, since the disabilities were opined by RMB to be neither attributable to nor aggravated by Air Force service his claim for grant of disability element of disability pension was rejected. 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 and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disabilities of applicant are attributable to or aggravated by Air Force service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

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 second disability i.e. '**HYPERTENSION (OLD V-67)**' to be neither attributable to nor aggravated (NANA) by Air Force service on the ground of onset of disability on 26.06.2002 respectively while posted in Peace location (Kanpur), therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Air Force training and associated stress and strain of Air Force service. The applicant was enrolled and commissioned in Indian

Air Force on 13.07.1964 and 20.09.1986 respectively and the second disability has started after more than 37 years of Air Force service i.e. on 26.06.2002. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the second disability of the applicant should be considered as aggravated by Air Force service, as such the applicant is entitled for the disability element of disability pension for two years for second disability from the next date of his retirement.

8. However, with regard to first disability i.e. '**MENIERE'S DISEASE (OLD)**' we are of the view that since, applicant's first disability element is 15- 19% for two years, applicant does not fulfil the requirement of Pension Regulations for the Army, 1961 (Part-I) as the applicant was discharged from service on completion of terms of engagement, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% in terms of reported judgment in the case of ***Sukhwinder Singh vs Union of India & Ors***, (2014) STPL (WEB) 468.

9. In addition to above, the Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 ***Union of India & Ors vs Wing Commander SP Rathore***, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability

percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

10. 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 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."*

11. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)***, we are of the considered view that benefit of rounding off of disability element of disability pension @ 30% for two years to be rounded off to 50% for two years for the second disability may be extended to the applicant from the next date of his retirement.

12. Since the applicant's RMB was valid for two years w.e.f. 31.12.2002, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability element of disability pension.

13. In view of the above, the **Original Application No. 489 of 2021** deserves to be partly allowed for second disability, hence, **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for second

disability, are set aside. Second disability i.e. '**HYPERTENSION (OLD V-67)**' of the applicant is held as aggravated by Air Force service. The applicant is entitled to get disability element of disability pension @30% for two years from the next date of his retirement for the second disability. The respondents are directed to grant disability element of disability pension to the applicant @30% for two years which would stand rounded off to 50% for two years from the next date of his retirement for the second disability. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. Respondents are further 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.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 20 January, 2022

AKD/-