

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 855 of 2023**Monday, this the 20th day of November, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**

Gp. Capt. Sanjeev Kumar Singh Gosain (Retd.) (No. 21358-K),
S/o Shri Late Sqn. Ldr. Raje Singh, Pmt. Residing at House
No.30, Smith Nagar, Prem Nagar, Dehradun, Uttarakhand-
248007.

..... Applicant

Ld. Counsel for the : **Shri Raj Kumar**, Advocate.
Applicant **Shri Vinay Pandey**, Advocate
Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air HQ (Vayu Bhawan), Rafi Marg, New Delhi.
3. Dte. Of Air Veterans, Air HQs, SMC Building (First Floor), Subroto Park, New Delhi-110010.
4. JCDA, Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the : **Ms. Amrita Chakraborty**, Advocate
Respondents. Central Govt. Counsel
Assisted by **Warrant Officer S.K. Mishra**,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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) *Direct respondents to grant disability element of pension for disability No. (iii) to disability No. (vi) duly rounded off to 100% w.e.f. his date of retirement i.e. 16.07.2022.*
- (b) *Direct respondents to pay the due arrears of disability element of Pension with interest @12% p.a. from the date of retirement with all consequential benefits.*
- (c) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. Briefly stated, applicant was commissioned in the Indian Air Force on 15.06.1991 and was prematurely retired from service on 15.07.2022 at his own request in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at 9 BRD Air Force on 03.03.2022 assessed his disabilities (i) **‘COMMUNED FRACTURE TIBIA FIBULA 1/4TH RT (OLD) S82.7’ @20%** for life as attributable to service, (ii) **‘POST DISCLOCATION LT HIP JOINT (OLD) S73’ @20%** for life as attributable to service, (iii) **‘DIABETES MELLITUS TYPE II (OLD) E-11.0’ @20%** for life as neither attributable to service nor

aggravated by service (NANA), (iv) **'ECG ABNORMALITY (LBBB) (OLD) I 44.7'** @15% as NANA, (v) **'SYMPTOMATIC 2 : 1 AV BLOCK-POST PERMANENT PACEMAKER IMPLANTATION PPI (DDDR, SIM) DONE ON 04 DEC 19 (OLD) I 44.2, Z95'** @50% for life as NANA and (vi) **'CATARACT RE (OPTD) WITH PSEUDOPHAKIA RE (OLD) H25.8'** @15% as NANA, **composite disabilities 81.5% for life.** The Net Assessment Qualifying for disability pension has been assessed as 36% for life. Accordingly, the applicant was granted disability element of disability pension @36% rounded off to @50% for life vide letter dated 30.08.2022. But the applicant's claim for grant of disability element of disability pension for the third, fourth, fifth and sixth disabilities was rejected. The applicant sent Legal Notice-cum-Representation/Appeal dated 02.09.2022 but of no avail. 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 commissioning, 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 Commissioning in Air Force. Although the first and second disease of the applicant have been regarded as attributable to service and the applicant is getting disability element of disability pension @36% for life rounded off to 50% for life but the third, fourth, fifth and sixth diseases of the applicant have been regarded as neither

attributable to nor aggravated by service (NANA). These diseases of the applicant were also contracted during the service, hence they are also 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 for these diseases also and its rounding off to 100%.

4. On the other hand, Ld. Counsel for the respondents contended that the first and second diseases of the applicant have been regarded as attributable to or aggravated by service, hence, he was granted disability element @36% rounded off to 50% for life. She further contended that third, fourth, fifth and sixth disabilities i.e. **'DIABETES MELLITUS TYPE II (OLD) E-11.0'**, **'ECG ABNORMALITY (LBBB) (OLD) I 44.7'**, **'SYMPTOMATIC 2:1 AV BLOCK-POST PERMANENT PACEMAKER IMPLANTATION PPI (DDDR, SIM) DONE ON 04 DEC 19 (OLD) I 44.2, Z95'** and **'CATARACT RE (OPTD) WITH PSEUDOPHAKIA RE (OLD) H25.8'** have been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for these disabilities. She 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 and we

find that the questions which need to be answered are of two folds:-

- (a) Whether the third, fourth, fifth and sixth disabilities i.e. **'DIABETES MELLITUS TYPE II (OLD) E-11.0'**, **'ECG ABNORMALITY (LBBB) (OLD) I 44.7'**, **'SYMPTOMATIC 2:1 AV BLOCK-POST PERMANENT PACEMAKER IMPLANTATION PPI (DDDR, SIM) DONE ON 04 DEC 19 (OLD) I 44.2, Z95'** and **'CATARACT RE (OPTD) WITH PSEUDOPHAKIA RE (OLD) H25.8'** of the applicant are also attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for these disabilities also?

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 third, fifth and sixth disabilities '**DIABETES MELLITUS TYPE II (OLD) E-11.0**', '**SYMPTOMATIC 2:1 AV BLOCK-POST PERMANENT PACEMAKER IMPLANTATION PPI (DDDR, SIM) DONE ON 04 DEC 19 (OLD) I 44.2, Z95**' and '**CATARACT RE (OPTD) WITH PSEUDOPHAKIA RE (OLD) H25.8**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in February, 1999, December, 2019 and January, 2022 respectively while posted in Peace locations (Bombay, Nagpur and Pune), therefore, applicant is not entitled to disability element of disability pension for these disabilities. 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 for these disabilities are 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 commissioned in Indian Air Force on 15.06.1991 and the third, fifth and sixth disabilities have started after more than 8, 28 and 31 years of Air Force service respectively i.e. in February, 1999, December, 2019 and January, 2022. 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 third, fifth and sixth disabilities i.e. '**DIABETES MELLITUS TYPE II (OLD) E-11.0**',

‘SYMPTOMATIC 2:1 AV BLOCK-POST PERMANENT PACEMAKER IMPLANTATION PPI (DDDR, SIM) DONE ON 04 DEC 19 (OLD) I 44.2, Z95’ and ‘CATARACT RE (OPTD) WITH PSEUDOPHAKIA RE (OLD) H25.8’ of the applicant should also be considered as aggravated by Air Force service.

8. With regard to fourth disability i.e. **‘ECG ABNORMALITY (LBBB) (OLD) I 44.7’** we are of the view electrocardiogram (ECG) is a simple, non-invasive test that records the electrical activity of the heart and an ECG can help diagnose certain heart conditions, including abnormal heart rhythms and coronary heart disease. Hence, it's degree cannot be assessed and computed for the purpose of composite assessment of the disabilities.

9. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

10. In the instant case there are functional effects of the disabilities overlapping, as such composite assessment is to be

reduced in proportion to the degree of overlapping. The degree of first disability is 20%, second disability is 20%, third disability is @20%, fifth disability is 50% and sixth disability is @15% and the composite assessment of all the disabilities is 81.5%. Accordingly, we hold that composite assessment of first, second, third, fifth and sixth is less than @75% for life.

11. 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."*

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. 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)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the

considered view that benefit of rounding off of disability element of disability pension less than @75% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

14. In view of the above, the **Original Application No. 855 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, if any, rejecting the applicant's claim for grant of disability element of disability pension for the third, fifth and sixth disabilities is set aside. Be it mentioned that the applicant's first and second disabilities have already been regarded as attributable or aggravated by Air Force service and the applicant is getting disability element @36% rounded off to 50% for life. The third, fifth and sixth disabilities i.e. **DIABETES MELLITUS TYPE II (OLD) E-11.0**, **'SYMPTOMATIC 2:1 AV BLOCK-POST PERMANENT PACEMAKER IMPLANTATION PPI (DDDR, SIM) DONE ON 04 DEC 19 (OLD) I 44.2, Z95'** and **'CATARACT RE (OPTD) WITH PSEUDOPHAKIA RE (OLD) H25.8'** of the applicant are also held as aggravated by Air Force Service. The applicant is held entitled to get disability element less than @75% for life which would be rounded off to 75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant less than @75% for life which would stand rounded off to 75% for life from the next date of his retirement. The disability element of disability pension paid @50% from the next date of applicant's

retirement shall be adjusted from the arrears. The respondents are further 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 the actual payment

15. No order as to costs.

16. Warrant Officer S.K. Mishra, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 20 November, 2023

AKD/-