

**Court No.1**  
**Reserved Judgment**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 314 of 2017**

Tuesday, this the 23<sup>rd</sup> day of January, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex-768919 SGT Ram Khelawan  
Son of Late Ganga Deen  
Resident of House No. 36, Bhagwant Tatiya,  
Shyam Nagar, Post C.O.D.  
Kanpur Nagar, Uttar Pradesh

.....Applicant

Ld. Counsel for : **Shri Ashish Kumar Singh, Advocate**  
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Air Staff, Vayu Bhawan, New Delhi.
3. Director-III (DP), Air Head Quarters, Directorate of Air Veteran, Subroto Park, New Delhi.
4. Dy Director, DD AV Appeals, Air Force Head Quarters, Subroto Park, New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani,**  
Respondents **Ld. Counsel for Central Govt.**

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

*(i) To quash the order/letter dated 23.02.2017, issued by the opposite party no. 3, as contained in Annexure No. A to the original application.*

*(ii) To direct the respondents to consider the disability pension of the applicant after conducting his review medical examination in accordance with law.*

*(iii) To issue any other appropriate order or direction as this Hon’ble tribunal may deem fit and proper in the nature and circumstances of the case.*

*(iv) Award cost of Original Application in favour of the applicant.”*

2. The undisputed facts, as averred by the learned counsel for both the parties, are that the applicant was enrolled in the Air Force on 28.06.1994 in medically fit condition and was discharged from service on his own request on 26.09.2013. During his service in February 2009, the applicant while carrying Air Craft Picketing Block in Bidar by pushing, got injury in waist and treatment of which was done at Air Force Hospital and subsequently he was referred to Military Hospital Secunderabad for treatment but got no relief. The applicant was declared disabled under the Low Medical Category P3

(Permanent) due to disease '**PIVD L4-L5(OLD) M-51.0.Z-09**'. Applicant had served in the Air Force more than 19 years. The medical board held before discharge considered the disability due to '**PIVD L4-L5 (OLD)**' as 20% for life and disability was considered as aggravated to Air Force service but disability qualifying element for disability pension was reduced/assessed @ 16% for life. The applicant was informed about non-entitlement of disability pension vide letter dated 31.10.2014. His first and second appeals were also rejected vide orders dated 09.02.2016 and 27.12.2016 respectively. Later on, Air Headquarters, New Delhi, vide his letter dated 23.02.2017, has sent an amendment to his earlier letter dated 31.10.2014 for rejection of disability pension claim from "*has been found to be neither attributable to nor aggravated by military service*" to read as "*has been found to be aggravated by military service but the same has been assessed as less than 20%*". He further submitted that since at the time of enrollment, the applicant was in fit medical condition, as such his disability should be considered as attributable by the service also as it is considered as aggravated by the service and disability pension should be granted to the applicant in view of Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I).

3. We have heard Shri Ashish Kumar Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant further submitted that initially the percentage of the disability was granted as 20% for life, aggravated by Air Force service, however his percentage of the disability was reduced to 16% as the applicant had refused to undergo the surgical management (spine operation).

5. **Per Contra**, Learned Counsel for the respondents submitted that the disability due to the disease '**PIVD L4-L5 (OLD)**' has been assessed as 20% for life and disability was considered as aggravated to Air Force service but disability qualifying element for disability pension was assessed @ 16% for life (4% deducted from total percentage of disability as the individual refused treatment). The applicant was in Low Medical Category and discharged from service at his own request. As per Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I), disability pension is granted to those persons whose disability is assessed by medical authority to be more than 20% and is considered as attributable and aggravated by Air Force Service. Since his disability was considered as 20% for life and reduced to 16% by the Medical Board, he was not granted disability pension.

6. Since the applicant was enrolled in fit medical condition and discharged in low Medical Category, we are of the view

that his case is squarely covered by the judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264.

7. The Medical Board held before discharge originally assessed the disability of the applicant as 20% for life and aggravated by military service. The net disability assessment for grant of disability pension was reduced from 20% to 16% for life at a subsequent stage by the respondents on the grounds of refusing to take treatment i.e. undergo spinal operation.

8. Considering all aspects of the case, we are of the opinion that spinal operation has not reached a level of validating and trust where success can be guaranteed for 100% recovery. On the contrary there is a lot of reservations on undertaking spinal operation. Hence the refusal of the applicant to undergo spinal operation in our opinion is not a valid ground for reducing his disability percentage from 20 to 16% specially so when one considers the complications which are associated with spinal operation.

9. Notwithstanding the above, the law on rounding off has been well settled by the Hon'ble Apex Court in the case of

***Union of India vs. Ram Avtar & Ors*** in Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Relevant extracts are as follows :-

*“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. In view of the above, his disability as considered by Release Medical Board i.e. 2006, aggravated by military service, subsequently reduced by respondents to 16% is rounded off to 50% for life.

11. In view of the above the Original Application deserves to be allowed.

12. Accordingly the Original Application No. 314 of 2017 is **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to grant disability pension to the applicant after rounding off @ 50% for life from the date of discharge. Respondents shall give effect to this order within a period of four months from the date of receipt of a certified copy of this order failing which the applicant shall be entitled to interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: January, 2018  
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