

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 64 of 2019**

Thursday, this the 08th day of April, 2021

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

No. 655132 L Sgt. Om Prakash Ojha (Retd.), Son of Late Roop Lal Ojha, 609/1A – Sanjeev Nagar, Near Noel Convent School, Sanjeev Nagar Ahirwan, PO – Harjinder Nagar, Kanpur-208007 (UP).

..... Applicant

Ld. Counsel for the Applicant : **Col. Y.R. Sharma (Retd.)**, Advocate.

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, new Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Air Headquarters, Directorate of Veterans, Subroto Park, New Delhi-110010.
4. Controller of Defence Accounts (Air Force), New Delhi.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Yogesh Kesarwani**,
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) Set aside the Invaliding Medical Board proceedings held from 26 Sep 1994 onwards to the extent where it is held that disability ‘Neurosis (Depressive Reaction)’ is neither attributable nor aggravated to military service being constitutional disorder (Annexure A-1).*
- (b) Set aside the Air Headquarters Directorate of Veterans Subroto park, New Delhi-110010, letter rejected the claim on the ground that since the disability of the applicant is NANA he is not entitled for Disability Pension. Copy of Impugned order is Annexure A-2.*
- (c) Set aside the Air Headquarters Directorate of Veterans Subroto Park, New Delhi-110010, letter rejecting the Appeal by saying that Honourable Supreme Court Judgment in Dharam Vir Singh vs Union of India has not issued any policy for grant of disability pension in NANA Cases. Copy of impugned order is at Annexure A-3.*
- (d) Direct Respondents to grant 50% disability element of pension for life, to be rounded of to 75% for disability ‘Neurosis (Depressive Reaction)’ to the applicant from the date of retirement.*
- (e) Direct the Respondents to pay an interest @12% per annum on the arrears on disability pension.*
- (f) Allow this Original Application with costs.*
- (g) Issue/Pass an order or direction as the Honourable Tribunal may deem fit in the circumstances of the case.”*

2. Briefly stated, applicant was enrolled in Indian Air Force on 28.04.1975 and was invalided out from service on 24.12.1994 in

Low Medical Category EEE on having been found medically unfit for further service after rendering 19 years and 241 days of service. At the time of retirement from service, the Invaliding Medical Board (IMB) held at 5 AFH on 11.11.1994 assessed his disability '**AFFECTIVE DISORDER DEPRESIVE TYPE**' @ 50% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability pension was rejected vide letter dated 11.03.1996. The applicant preferred First Appeal which too was rejected vide letter dated 05.03.1998. The applicant preferred representation dated 22.11.2016 which too was rejected vide letter dated 31.07.2017. The applicant preferred another Appeal dated 26.07.2017 which too was rejected vide letter dated 13.10.2017. 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 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 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. 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 pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**AFFECTIVE DISORDER DEPRESIVE TYPE**' has been regarded as 50% for two years by IMB. However, since the disability was opined by IMB to be neither attributable to nor aggravated by Air Force service his claim for grant of disability pension was not granted. 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 documents and we find that the questions which need to be answered are of two folds :-

(a) Whether the disability of applicant is 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 IMB has denied attributability to the applicant only by endorsing that the disability “**AFFECTIVE DISORDER DEPRESIVE TYPE**’ to be neither attributable to nor aggravated (NANA) by Air Force service and not connected with service as it is a constitutional/genetic disorder. The disability has been firstly detected in February, 1985 whereas the applicant was enrolled on 28.04.1975 i.e. after about ten years of Air Force service. We are therefore of the considered opinion that the reasons given in IMB for declaring disease as NANA are brief and cryptic in nature. 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 disability of the applicant should be considered as aggravated by Air Force service, as such the applicant is entitled for the disability pension for two years from the date of his discharge i.e. 24.12.1994.

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 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.”

9. In view of above, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, the applicant is not entitled to rounding off for the period from 24.12.1994 to 31.12.1995. However, the applicant is entitled for benefit of rounding off for remaining period of two years i.e. from 01.01.1996 to 24.12.1996.

10. Since the applicant's IMB was valid for two years w.e.f. 24.12.1994, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 64 of 2019** deserves to be partly allowed, hence, **partly allowed**. The impugned orders dated 11.03.1996, 05.03.1998, 31.07.2017 and 13.10.2017 are set aside. The disability of the applicant is held as aggravated by Air Force service. The applicant is entitled to get disability pension @50% for two years from the date of discharge to 31.12.1994 and, it would be rounded off to 75% for remaining period of two years i.e. from 01.01.1996 to 24.12.1996. The respondents are directed to grant disability element to the applicant @50% for two years from the date of discharge to 31.12.1994 and, it would stand rounded off to 75% for remaining period of two years i.e. from 01.01.1996 to 24.12.1996. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement 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.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08 April, 2021

AKD/-