

**Court No. 1**

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

**TRANSFERRED APPLICATION No. 23 of 2024**

Wednesday, this the 04<sup>th</sup> day of December, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

Air CMDE Shashi Kant Mishra, VM (G) (19570-H) F(P) (Retd.)  
 S/o Late Shri Mangla Prasad, R/o B-1314, Indira Nagar,  
 Lucknow-226016.

**..... Applicant**

Ld. Counsel for the : **Wg. Cdr. S.N. Dwivedi (Retd.)**, Advocate  
 Applicant

Versus

1. Union of India, Ministry of Defence, South Block, Rafi Marg,  
New Delhi-110106.
2. Air Headquarters, Dte of PP & R, West Block – VI, R.K.  
Puram, New Delhi-110066.
3. Air Cmde, Dte of Air Veterans, Air HQs (Subroto Park), New  
Delhi-110010.

**.....Respondents**

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

## ORDER

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 43 of 2023, for the following reliefs:-

- (a) *Set aside the impugned Order dated 29 April 2022.*
- (b) *Set aside the findings of RMB to the extent that the applicant’s disability of Hypertension is NANA and the percentage disability of his disability of sensori neural hearing loss is 15% as it ought to be 20%.*
- (c) *Grant the disability element of pension to the applicant @50% as per broad band policy w.e.f. 01 June 2022.*
- (d) *Pass any other order(s) as deemed fit in the interest of justice.*

2. Briefly stated, applicant was commissioned in the Indian Air Force on 11.06.1988 and retired on 31.05.2022 in Low Medical Category on attaining the age of superannuation. The applicant is in receipt of Service Pension. Before retirement from service, the Release Medical Board (RMB) held at 1 AFSB (Dehradun) on 05.11.2021 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (OLD), ICD NO. I10.0’ @30%** for life as neither attributable to nor aggravated (NANA) by service and

(ii) **‘MODERATE SENSORINEURAL HEARING LOSS (BOTH EARS) LT>RT (H 90.) Z09.0’ @15% for life as Aggravated** by military service. The applicant’s claim for grant of disability element of disability pension was rejected vide letter dated 29.04.2022 being first disability as NANA and second disability being less than 20%. The applicant preferred First Appeal dated 28.04.2022 which too was rejected vide letter dated 20.07.2022. It is in this perspective that the applicant has preferred the present Application.

3. Learned Counsel for the applicant pleaded that at the time of commission, 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 commission in Air Force. The first disease of the applicant was also contracted during the service, hence it is attributable to and aggravated by Air Force Service. Although the onset of applicant’s first disability was in Peace Station but posting profile shows that before the onset of applicant’s disability he was posted at Filed Station on four times. He further submitted that the second disability of the applicant has been regarded as aggravated by military service by the RMB but it’s degree of disability has wrongly been assessed @15% for life as Moderate Sensori Neural Hearing loss cannot be assessed less than 20%. 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 and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that the first disability of the applicant @30% for life has been regarded as NANA by the RMB and although the second disability of the applicant has been regarded as aggravated by military service but its degree of disability has been assessed @15% for life which is less than 20%, hence as per Regulation 37 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“An officer who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 percent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section”* the applicant is not entitled to disability element of disability pension. He further submitted that assessment of 15% for life by the RMB for the second disability is appropriate as CV is 600 cm in better ear as per Para 20, Chapter VII, Guide to Medical Officers (Military Pension), 2002 amendments 2008. The applicant had personal history of consuming alcohol vide Opinion of Senior Adviser (Medicine) AFCME Subroto Park, New Delhi dated 10.07.2012. The applicant was initially placed in low medical category A4G4 (Temp) (T-12) composite for the aforesaid disabilities vide AFMSF-15 dated 11.07.2012. He was thereafter,

reviewed periodically for the aforesaid disabilities and was placed in low medical classification A2G2 (Permanent) vide AFMSF-15 dated 19.11.2013. He pleaded for dismissal of the Transferred 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 two folds:-

- (a) Whether the first disability i.e. '**PRIMARY HYPERTENSION (OLD), ICD NO. I10.0**' of the applicant is attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

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 first disability '**PRIMARY HYPERTENSION (OLD), ICD NO. I10.0**' and is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in July, 2012 while posted in Peace location, therefore, applicant is not entitled to disability element of disability pension for the first disability. 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 the first disability 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 commissioned in Indian Air Force on 11.06.1988 and the first disability has started after more than 24 years of Air Force service i.e. in July, 2012. Before the onset the first disability the applicant was posted at Field Stations on four times. 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 first disability of the applicant should be considered as aggravated by Air Force service.

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 10<sup>th</sup> 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. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

10. 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/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @40% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

11. In view of the above, the **Transferred Application No. 23 of 2024** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Be it mentioned that the second disability of the applicant has already been regarded as aggravated by military service by the RMB. The first disability of the applicant is

held as aggravated by Air Force Service. The applicant is entitled to get disability element @40% for life which would be rounded off to 50% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @40% for life which would stand rounded off to 50% for life from the next date of his retirement. 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.

12. No order as to costs.

**(Maj. Gen. Sanjay Singh)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 04 December, 2024

AKD/-