

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 110 of 2017

Friday this the 2nd day of February, 2018

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

No. 687445 B Ex Cpl Ravindar Singh,
S/O Sri Sugad Singh Dagar
R/O Vill Anehra,
PO Saidpur
District-Bulandshahar (UP),

..... **Applicant**

By Legal Practitioner - Shri KK Misra, Advocate learned counsel for the
applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence,
(Air Force), New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters (Vayu Bhawan)
New Delhi-110011.
3. Officer-in-Charge Air Force Record Office, Subroto Park, New
Delhi-10.
4. Deputy CDA, (Air Force), Ulan Batar Raud, New Delhi.

..... **Respondents**

By Legal Practitioner – Shri Ashish Saxena,
Learned Counsel for the Central Govt.

“Per Hon’ble Mr Justice S.V.S Rathore, Member (J)”

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 Air Headquarters, Directorate of Air Veterans, Delhi Cantt letter No Air HQ/99798/1/687445/DAV(DP/RMB) dt 29 April 2016, as contained in A-4 to the OA..

(ii) To direct the respondents to declare the applicants disability as attributed to Air Force Service and grant 70% or more disability pension, as per entitlement, to the applicant wef the date he was discharged from the service.

(iii) To direct the respondents to grant arrears of disability pension to the applicant with interest as per his entitlement.

(iv) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.

(v) Cost the case may be allowed.

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 01.07.1987 in medically fit condition and was discharged from service on 30.06.2007. Applicant reported to SMC on 29.05.2003 with complaint of scaly patch over body and exaceration and he was referred to Military Hospital Ambala and found to have PSORIASIS VULGARISE (Onset 1990). The applicant was opined by dermatologist and was downgraded him low medical category CEE (T-24) weeks for disability PSORIASIS VULGARISE. Applicant again reported sick at SMC on 03.06.2004 with history of weakness in left side of body and referred to MH Ambala where he was diagnosed as a case of **Hempieresis**. Applicant was transferred to BHDC for evaluation by neurophysion on 30.08.2004 and was opined as a case of **Stroke in the Young (Right MCA Territory Infaret** and was place in low medical category CEE (T-24). During periodical review, the applicant placed in low medical category **A4G2 (P)** for disability Psoriasis Vulgarise and **A4G4 (P)** for disability Stroke

in the Young (Right MCA Territory) Infaret. Release medical board of the applicant had considered his disability (**Stroke in the Young (Right MCA Territory) Infaret and Psoriasis Vulgarise**) constitutional in nature and considered it NANA. The percentage of disability was assessed as 50% for disability **Stroke in the Young (Right MCA Territory) Infaret** and 20% for **Psoriasis Vulgarise**. Composite assessment was assessed as 60% for life long with NIL disability qualifying for disability pension. The applicant was informed about non-entitlement of disability pension vide letter dated 29.04.2016 and his appeal was also rejected on the grounds that the disabilities were neither attributable to nor aggravated by Air Force Service. Aggrieved, the applicant filed this instant Original Application. The delay in filing of Original Application has been condoned vide order dated 10.04.2017.

3. We have heard Shri VK Singh, learned counsel for the applicant and Shri Ashish Saxena, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that since at the time of enrollment, the applicant was in fit medical condition, as such his disability should be considered as attributable to and 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). He further submitted that the percentage of the disabilities were granted as 50% & 20% respectively for life and composite disability assessed 60% and aggravated by Air Force service.

5. **Per Contra**, Learned Counsel for the respondents submitted that the disabilities due to the disease '**Stroke in the Young (Right MCA Territory) Infaret and Psoriasis Vulgarise.**' have been assessed as 50% and 20% respectively for

life and composite disability has been assessed as 60%. 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 composite disability was considered as 60% for life neither attributable to nor aggravated by Air Force Service, as such, he was denied for 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 SSC 264. Hence his disability is considered as attributable to Air Force Service.

7. 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."*

8. In view of the above the Original Application deserves to be allowed. His disability as considered by RMB to be rounded off from 60% to 75% for life.

9. Accordingly the Original Application No. 110 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 @ 75% for life. Arrears of disability pension shall be paid from three years prior to the date of filing the original application i.e 26.07.2013. 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.

10. No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated: February, 2018
RS