

**Court No. 1**

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

**ORIGINAL APPLICATION No. 1203 of 2023**

Thursday, this the 08<sup>th</sup> day of February, 2024

**“Hon’ble Justice Anil Kumar, Member (J)  
Hon’ble Lt Gen Anil Puri, Member (A)”**

No 770257-G Ex Sgt Ashok Kumar Awasthi, son of Shri Yugul Kishor Awasthi, R/o Village-Bikhanpur, Post-Harripur, Distt-Unnao, State-Uttar Pradesh, PIN-241502.

..... Applicant

Ld. Counsel for the Applicant : **Shri R Chandra**, Advocate.

Versus

1. Union of India, through The Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1<sup>st</sup> Floor, Subroto Park, New Delhi-110010.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

.....Respondents

Ld. Counsel for the Respondents : **Mrs Anju Singh**, Advocate  
Central Govt. Counsel

**ORDER (Oral)**

1. This O.A. has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has made following prayers:-

- (a) *The Hon'ble Tribunal may be pleased to set aside the rejection order dated 28.10.2013 (Annexure No A-1) and rejection order dated 04.07.2023 (Annexure No A-2).*
- (b) *The Hon'ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 01.06.2014 (next date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (c) *Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability element as per law in terms of Ram Avtar's case.*
- (d) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) on 05.05.1994 and he was discharged from service on 31.05.2014 (A/N) in Low Medical Category on fulfilling the conditions of his enrolment. During the course of his service, he was downgraded to low medical category 'A4G4 (T-24)' w.e.f. 10.06.2008 due to disability 'Primary Hypertension'. At the time of discharge from service, the Release Medical Board (RMB) held at Air Force Station, New Delhi in the month of July, 2013 assessed his disability '**Primary Hypertension Old (ICD-10)**' @ 30% for life neither

attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability element of pension was rejected vide letter dated 28.10.2013. Thereafter, appeal preferred by the applicant was also rejected vide letter dated 04.07.2023. It is in this perspective that the applicant has preferred this O.A. for grant of disability element of pension.

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 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 contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension @ 30% for life with rounding off benefits to 50% for life.

4. In support of his contention, learned counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs UOI & Ors***, (2013) AIR SCW 4236, ***Sukhwinder Singh vs UOI & Ors***, (2014) STPL (Web) 468 SC and

***Union of India vs Rajbir Singh & Ors***, Civil Appeal No 1859 of 2015 arising out of SLP No 27220 of 2012.

5. On the other hand, Ld. Counsel for the respondents contended that disability element of the applicant @ 30% for life has been regarded as NANA by the RMB, therefore under Regulation 153 of Pension Regulations for the Air Force, 1961 (Part-I), the applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

6. In support of his contention, learned counsel for the respondents has relied upon the Hon'ble Apex Court judgment passed in the case of ***Union of India & Ors vs Ex Sep Manisamy***, Civil Appeal No 6536 of 2012, ***Ex Cfn Nar Singh Yadav***, Civil Appeal No 7672 of 2019, ***Union of India vs Ravinder Kumar***, Civil Appeal No 1837 of 2009 and order dated 11.09.2023 passed by AFT (RB), Chennai in PA No 121 of 2021, ***Ex Sub M Vijayakannan vs UOI & Ors***.

7. 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 disability of the applicant is attributable to or aggravated by Military Service?

(b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension?

8. On perusal of record we find that the applicant is suffering from **'Primary Hypertension Old (ICD-10)'**. The RMB has assessed his disability @ 30% for life neither attributable to nor aggravated by military service, therefore, we would like to find out whether the disability of the applicant is attributable to and aggravated by military service.

9. 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)."*

10. 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 disability to be NANA by military service on the ground of onset of disability while posted in Peace location (815 SU AF Mount Abu), therefore, applicant is not entitled to disability element of pension. 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 pension to the applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Air Force (IAF) on 05.05.1994 and the disability had first started after more than 14 years of Air Force service i.e. in June, 2008. 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*** (supra), and the disability of the applicant should be considered as aggravated by military service.

11. The law on the point of rounding off of disability element of 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 element of pension only to the personnel who have been invalided 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. 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*** 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 pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant w.e.f. 01.01.2016.

13. 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.

14. It may also be observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, para-9, Hon'ble Apex Court has observed as under:-

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same **or restrict the relief which could be granted to a reasonable period of about three years**. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

15. In view of the above, the **Original Application No. 1203 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of pension, is set aside. The disability '**Primary Hypertension (ICD-10)**' of the applicant is held as aggravated by Air Force Service. The

applicant is entitled to get disability element @ 30% for life which would be rounded off to 50% for life w.e.f. three years preceding filing of this O.A. which was filed on 27.09.2023. The respondents are directed to grant disability element to the applicant @ 30% for life which would stand rounded off to 50% for life w.e.f. three years preceding filing of this O.A. 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% p.a. till the actual payment

16. No order as to costs.

17. Miscellaneous application (s), pending if any, stand disposed off.

18. 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 this case, the plea is rejected.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated :08.02.2024

*rathore*

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