

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 730 of 2023

Tuesday, this the 20th day of February, 2024

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

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 679108-H, Ex. WO Ram Dayal Yadav, S/o Late Hans Raj Yadav,
R/o : Village- Singar Pur, Post Office – Malgaon, District – Azamgarh,
Pin-223222, State- Uttar Pradesh.

..... Applicant

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

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Govt. 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, 1st Floor, Subroto Park, New Delhi -110010.
4. The Chief controller Defence Accounts, Draupadi Ghat, Allahabad (U.P).

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Central Govt. Standing Counsel
Assisted by **MWO S.K. Mishra**,
Departmental Representative

ORDER

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (I) *The Hon’ble Tribunal may be pleased to set aside the rejection order dated 19/07/2021 (Annexure no. A-1).*
- (II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with from 01/09/2021 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @50% in terms of Ram Avtar’s Case.*
- (IV) *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. Briefly stated, applicant was enrolled in the Indian Air Force on 28.03.1984 and was discharged on 31.08.2021 in Low Medical Category on attaining the age of superannuation after rendering 37 years 05 months and 12 days of regular service. At the time of discharge from service, the Release Medical Board (RMB) held at 38 Wing Air Force on 23.10.2020 assessed his disabilities (i) **‘PRIMARY HYPERTENSION (OLD) I-10.0, Z09.0’ @ 30%** (ii) **‘DIABETES MELLITUS TYPE-II OLD E11,Z09.0’ @20%, composite disabilities @40% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant’s claim for grant of

disability pension was rejected vide letter dated 19.07.2021. The applicant preferred First Appeal dated 30.08.2021 but of no avail. 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 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 diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of 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 composite disabilities of the applicant @ 40% for life have been regarded as NANA by the RMB, hence as per Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over”* the applicant is not entitled to disability element of disability pension. He further submitted that Hon’ble Apex Court on 03.07.2023, in Civil Appeal No. 4248 of 2023 filed by

Union of India against grant of disability pension with rounding off in a case of NANA [*Brig Mohanan Nair (Retd) Vs Union of India, OA 437 of 2018*] has stayed the grant of disability pension ordered by AFT, RB, Kochi. In that case, the applicant had retired in 2013 as a Low Medical Category (LMC) on account Primary Hypertension, Obesity and Impaired Glucose Tolerance. In view of the aforesaid order passed by the Hon'ble Supreme Court, the Armed Forces Tribunal, Regional Bench, Jabalpur has passed an order dated 20.07.2023 in O.A. No. 24 of 2020, **JC – 580297A, Sub/Clk Chandra Sekhar Acharya (Retd.) Vs. Union of India & Others** that “awaiting decision of the Hon'ble Supreme Court, list the matter after Civil Appeal No. 4248 of 2023 is decided by the Supreme Court”. Relying upon the above order, Ld. Counsel for the respondents submitted that this case may be deferred. Even otherwise, 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 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 disabilities of the applicant are 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 disabilities '**PRIMARY HYPERTENSION (OLD) I-10.0, Z09.0**' and '**DIABETES MELLITUS TYPE-II OLD E11,Z09.0**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in December 2011 and December 2017 while posted in Peace location (Chandigarh and Sullur), therefore, applicant is not entitled to disability element of disability 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 disability element of disability pension to applicant is 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 enrolled in Indian Air Force on 28.03.1984 and the disabilities have been started after more than 27 and 33 years of Air Force service i.e. in December 2011 and December 2017. 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 both the disabilities 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 10th December 2014). In this Judgment the Hon'ble Apex Court noded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability element 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(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.

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 & (supra)*** 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 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 discharge.

11. We have perused the order passed by the Hon'ble Apex Court on 03.07.2023, in Civil Appeal No. 4248 of 2023 filed by Union of India against grant of disability pension with rounding off in a case of NANA **[Brig Mohanan Nair (Retd) Vs Union of India, OA 437 of 2018]** by which Hon'ble Apex has stayed the grant of disability pension ordered by AFT, RB, Kochi and the order dated 20.07.2023 in O.A. No. 24 of 2020, **JC – 580297A, Sub/Clk Chandra Sekhar Acharya (Retd.) Vs. Union of India & Others** passed by the Armed Forces Tribunal, Regional Bench, Jabalpur and we find that the aforesaid orders passed by the Hon'ble Supreme Court as well as Armed Forces Tribunal, Regional Bench, Jabalpur were in a specific case as an interim measure. Therefore, we are of the view that due to the aforesaid orders instant Original Application need not be deferred.

12. In view of the above, the **Original Application No. 730 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. Both the disabilities of the applicant are 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 discharge. 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 discharge. 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

13. No order as to costs.

14. Master Warrant Officer S.K. Mishra, Departmental Representative 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 the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 20 February, 2024

AKD/Ashok/-