

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 55 of 2023

Wednesday, this the 07th day of February, 2024

**“Hon’ble Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

635455-K HFO Rajendra Kumar Pandey (Retd), presently residing at H. No. 11K/5B, Alka Vihar (Adarsh Nagar) (Near Overhead Water Tank), Panghat Ka Pool, Bamrauli, Allahabad, PIN Code-211012.

..... Petitioner

Ld. Counsel for the : **Shri Raj Kumar Mishra**, Advocate.
Petitioner

Versus

1. Union of India, through Secretary, Minis of Def, Room No 101-A, South Block, DHQ, PO-New Delhi, PIN-110011.
2. The Chief of the Air Staff, through Dir of Air Veteran, Air HQ, Subroto Park, New Delhi-110010.
3. The Joint CDA Air Force, Subroto Park, Delhi Cantt, New Delhi-110010.
4. The PCDA (P), Allahabad, Uttar Pradesh, PIN-211012.

.....Respondents

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

ORDER (Oral)

1. O.A. No. 1465 of 2020 was filed by the petitioner in AFT, Principal Bench, New Delhi, which on transfer to this Tribunal has been re-numbered as T.A. No. 55 of 2023. The petitioner has made the following prayers:-

- (i) *Quash and set aside the impugned order dated 14 Mar 2020 to the extent this order deny the grant of disability pension to the petitioner;*
- (ii) *To direct the respondents to grant the disability pension @ 40% broad-banded to 50% along with arrears and interest @ 10% p.a. wef date of discharge, by treating disease as attributable to and aggravated by military service.*
- (iii) *To pass such further order or orders/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

2. Brief facts of the case are that the petitioner was enrolled in the Indian Air Force (IAF) on 21.11.1977 and he was discharged from service on 28.02.2015 (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)' vide AFMSF-15 dated 16.03.2010. At the time of discharge from service, the Release Medical Board (RMB) held at Air Force Station, Manauri in the month of April, 2014 assessed his disabilities (i) **Haemoglobinopathy (Alpha Thalassemia (ICD No D 58.2, Z 09.0))** and (ii) **'Primary Hypertension Old (ICD-10, Z 09.0)' @ 15-19%**

and 30% for life respectively neither attributable to nor aggravated (NANA) by military service. The petitioner's claim for grant of disability element of pension was rejected vide letter dated 25.06.2014 and thereafter, representation was also rejected vide letter dated 14.03.2020. It is in this perspective that the petitioner had preferred Original Application No. 1465 of 2020 in AFT, Principal Bench, New Delhi which on transfer to this Tribunal is in the form of T.A. No. 55 of 2023.

3. Learned Counsel for the petitioner pleaded that at the time of enrolment, the petitioner 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 diseases at the time of enrolment in Air Force. The diseases of the petitioner were 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 petitioner be granted disability pension and its rounding off to 50%.

4. In support of his contention learned counsel for the petitioner has relied upon the Hon'ble Apex Court judgment passed in the case

of ***Dharamvir Singh vs Union of India & Ors***, 2013 7 SCC 13 and ***Union of India & Anr vs Rajbir Singh*** (Civil Appeal No 2904 of 2011 decided on 13.02.2015).

5. On the other hand, Ld. Counsel for the respondents contended that disability element of the petitioner @ 40% for life has been regarded as NANA by the RMB, therefore under Regulation 153 (a) of Pension Regulations for the Army, 1961 (Part-I), the petitioner 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 order passed by the AFT, Principal Bench in O.A. No 619 of 2017, ***Ex MWO Munni Lal Ram vs UOI & Ors*** and O.A. No. 1127 of 2017, ***Wg Cdr AH Ansari (Retd) vs UOI & Ors***.

7. We have heard Ld. Counsel for the petitioner 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 petitioner are attributable to or aggravated by Military Service?

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

8. On perusal of record we find that the petitioner is suffering from disabilities '**Haemoglobinopathy (Alpha Thalassemia (ICD No D 58.2, Z 09.0)** and '**Primary Hypertension Old (ICD-10, Z 09.0)**'. The RMB has assessed his disabilities @ 15-19% and 30% for life respectively neither attributable to nor aggravated by military service. The RMB has also assessed his composite medical disability for both the disabilities @ 40% for life and to be NANA, therefore, we would like to find out whether the disabilities are 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 petitioner only by endorsing that the disability to be NANA by military service on the ground of onset of disability No 1 in 2009 and disability No 2 in 2011 while posted in Peace location (Utarlai), therefore, petitioner 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 petitioner 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 petitioner was enrolled in Indian Air Force on 21.11.1977 and the disabilities had started after more than 22 years of Air Force service i.e. in the year 2009 and 2011 respectively. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the petitioner in view of ***Dharamvir Singh*** (supra), and the disabilities of the petitioner should be considered as aggravated by military service.

11. 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."*

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 @ 40% for life to be rounded off to 50% for life may be extended to the petitioner from the next date of discharge i.e. w.e.f. 01.03.2015

13. 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.”*

14. In view of the above, the **Transferred Application No. 55 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the petitioner’s claim for grant of disability element of pension, is set aside. The disabilities **‘Haemoglobinopathy (Alpha Thalassemia (ICD No D 58.2, Z 09.0)** and **‘Primary Hypertension Old (ICD-10, Z 09.0)’** of the petitioner are held as aggravated by Air Force Service. The petitioner is entitled to get disability element @ 40% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of receipt of this transferred application to this Tribunal. This Transferred Application was received by this Tribunal on 21.11.2023. The respondents are directed to grant disability element to the petitioner @ 40% for life which would stand rounded off to 50% for life w.e.f. three years preceding 21.11.2023. 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

15. No order as to costs.

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

17. 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated :07.02.2024
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(Justice Anil Kumar)
Member (J)