

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1226 of 2023**

Thursday, this the 27th day of February, 2025

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

Gp. Capt. Rohin Vanaik (Retd.) 19253-G, S/o Late Shri Jagmohan Rai Vanaik, Resident of House No. 8/59, Bahar A, Sahara Estates, Jankipuram, Lucknow, UP -226021.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Air Staff, Air Headquarters, Vayubhawan, New Delhi -110106.
3. Air Cmde A V, Directorate of Air Veterans, Air Headquarters, SMC Building (First Floor), Subroto Park, New Delhi -110010.
4. Joint Controller of Defence Accounts (Air Force), Subroto Park, New Delhi -110010.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Ms. Deepti Prasad Bajpai**, Advocate
 Respondents. Central Govt. Standing Counsel

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 :-

- (a) *To issue/pass an order to set aside the impugned order dated 22.09.2023 (Annexure A-1) and 17.02.2023 (Annexure A-2) vide which grant of disability element to the applicant, has been denied.*
- (b) *To issue/pass any other or direction to modify the assessment of the Release Medical Board (Annexure No. A-3) of the applicant held on 26.08.2022, to the extent that all the six Ids (I) Diabetes Mellitus Type2, (II) Primary Hypertension (III) Dyslipidemia (IV) Hypothyroidism, (V) CAD DVD POST PCI TO LAD/LCX (2016), P/PCI TO LAD ISR, DEB TO RCA (Revised Diagnosis) and (VI) Iron Deficiency Anaemia, be declared as attributable /aggravated due to Air Force conditions, with net assessment qualifying for disability element @71.50 % for life, rounded up to 75% as per policy issued vide GoI, Ministry of Defence letter No.17(01)/2017/D (Pen/Policy) dated 23.01.2018 and the same circulated vide PCDA (P) Allahabad Circular No. 596 dated 09.02.2018.*
- (c) *To issue/pass any other order or direction to respondents to pay the disability element with effect from 01.04.2023 @71.50 % for life, rounded up to 75% and pay the accrued arrears.*
- (d) *To issue/pass any other order or direction that this Hon’ble Tribunal may deem fit, just and proper under the circumstances of the case.*

2. Briefly stated, applicant was commissioned in the Indian Air Force on 19.12.1987 and retired on 31.03.2023 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 New Delhi on 25.08.2022 assessed his disabilities (i) **'DIABETES MELLITUS TYPE-II (OLD) E11.0'** @20%, (ii) **'PRIMARY HYPERTENSION (OLD) (I-10)'** @30%, (iii) **'DYSLIPIDEMIA (OLD) ICD E78.5'** @5%, (iv) **'HYPOTHYROIDISM (OLD) E 03.9'** @10%, (v) **'CAD DVD POST PCI TO LAC/LCX (2016), P/PCI TO LAD ISR, DEB TO RCA (REVISED DIAGNOSIS) I-25.0'** @15% and (vi) **'IRON DEFICIENCY ICD D 50.9'** @15%, **composite disabilities @71.50% 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 17.02.2023. The applicant preferred First Appeal which too was rejected vide letter dated 22.09.2023. 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 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. All 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 pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @71.50% for life have been regarded as NANA by the RMB, 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% or over may, on retirement, be awarded 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. Ld. Counsel for the respondents further submitted that the onset of disabilities were while serving in peace locations. There is no close time association with service in field. The applicant continued to serve in peace stations till his release. The applicant was 47 years old at the time of initial evaluation. There was no hastening of the onset. He was also overweight with deranged lipid profile at the instant time. These are known risk factors and are indicative of probable unhealthy dietary habits. There was no delay in diagnosis and initiation of treatment. The applicant was provided with sheltered appointment to prevent any further aggravation. There is no evidence of aggravation of the

disease in terms of target organ damage/complications at the time of release. In view of lack of service factors responsible for the onset/worsening of the illness the condition of Primary Hypertension is held as NANA in terms of Para 43, Chapter VI, Guide to Medical Officers (Military Pensions), 2002/2008. Dyslipidemia is a metabolic disease with inherited enzyme deficiency and occurs due to excessive intake of saturated fats and has no causal connection with service. It is a lifestyle disease with occurs due to unhealthy dietary habits and lack of physical exercise. Attributability in Hypothyroidism is conceded in simple and multiple nodular goitres due to iodine deficiency in endemic areas and in hypothyroidism following therapeutic trials. Moreover, Hypothyroidism also has an autoimmune basis which may be aggravated due to service related stress and strain which are independent of Peace/Field. The applicant to be overweight with BMI of 28.39 Kg/m². His vital parameters and CVS examination were within normal range. 2D echo was suggestive of LVEF of 60% with no RWMA. CAD is held aggravated if an individual serves in Field/HAA/CI Ops after the onset. In applicant's case, he was continued to serve in peace locations till his release. Moreover, risk factors like BMI, Dyslipidaemia, Hypertension and Diabetes are present in applicant's case, accordingly, medical conditions CAD DVD Post PCI to LAD/LCS (2016), P/PCI to LAD ISR, DEB to RCA is conceded as NANA in terms of Para 47 Chapter VI of Guide to Medical Officers (Military Pensions), 2002/2008 and 14 days

charter of duties. She 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 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 first, second, fourth, fifth and sixth disabilities **‘DIABETES MELLITUS TYPE-II (OLD) E11.0’ ‘PRIMARY HYPERTENSION (OLD) I 10.0’, ‘HYPOTHYROIDISM (OLD) E 03.9’ ‘CAD DVD POST PCI TO LAC/LCX (2016), P/PCI TO LAD**

ISR, DEB TO RCA (REVISED DIAGNOSIS) I-25.0' and **'IRON DEFICIENCY ICD D 50.9'** are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in August 2013, December 2014, November 2016, June 2022 and December 2020 while posted in Peace locations (Devlali, Delhi and Barrackpore), 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 pension to applicant for these disabilities are cryptic, not convincing and doesn't reflect the complete truth on the matter. From the posting profiles of the applicant, we find that the applicant has served in Field Areas three times i.e. from 19.12.1987 to 13.01.1991 (Srinagar, Jammu & Kashmir), from 16.08.1993 to 24.03.1997 (Dalhousie) and 04.06.2007 to 01.05.2011. Even 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 19.12.1987 and the first, second, fourth, fifth and sixth disabilities have started after more than 25, 26, 31 and 33 years of Air Force service i.e. in Aug 2013, Nov'2016 Jun 2022 and Dec 2020. With regard to overweight, we find that applicant's ideal weight was 69 Kg whereas the actual weight was 81 Kg, over weight is 12 Kg which is 17.39% i.e. less than 20%. As such it cannot be said that the cause of disabilities is overweight. 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, second, fourth, fifth and sixth disabilities of the applicant should be considered as aggravated by Air Force service.

8. However, with regard to third disability i.e. '**DYSLIPIDEMIA (OLD) ICD E 78.5**' we are agree with the opinion of the RMB as NANA as it is a lifestyle disease.

9. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

"17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct."

10. In the instant case there are functional effects of the first, second, fourth, fifth and sixth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first, second, fourth, fifth and sixth disabilities are @20%, @30%, @10%, @30% and @15% respectively for which we are of the view that there is some

overlapping as the composite assessment of all the six disabilities is @71.50% for life. The degree of third disability is @5% which has been held as NANA by us. Accordingly, we hold that composite assessment of first, second, fourth, fifth and a sixth disability is less than @70% for life.

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 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 invalided 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. 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.

13. 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 less than @70% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

14. In view of the above, the **Original Application No. 1226 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The first, second, fourth, fifth and sixth disabilities of the applicant are held as aggravated by Air Force Service. The third disability of the applicant is held as NANA as has been opined by the RMB. The applicant is entitled to get disability element less than @70% for life which would be rounded off to 75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant less than @70% for life which would stand rounded off to 75% 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.

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 27 February, 2025

AKD/-