

Reserved
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1325 of 2023

Friday, this the 28th day of February, 2025

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

Gp. Capt. Salil Misra (Retd.) (Service No. 19463-G) MET, Flat No. B 623, Azea BBotanica, Sector 11, Vrindavan Yojna, Rai bareili Road, Lucknow-226029 (U.P.).

..... Applicant

Ld. Counsel for the : **Gp. Capt. Y. Genugopal (Retd.)**, Advocate
Applicant **Dr. Amit Asthana**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110001.
2. The Chief of Air Staff, Air HQ (VB), Rafi Marg, New Delhi-110106.
3. Air Cmde AV, Directorate of Air Veteran, Subroto Park, New Delhi-110010.
4. Jt. CDA (P), Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, 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 or direction of appropriate nature to the respondents to set aside/quash the impugned orders dated 23.03.2023 and 06.10.2023;*
- (b) *Direct the Respondents to treat the Applicant’s disabilities, viz, ‘Primary Hypertension’, Diabetes Mellitus-II’, ‘Dyslipidaemia’ and ‘Chronic Kidney Disease – Stage III’ as attributable to and/or aggravated by the Air Force service;*
- (c) *Direct the Respondents to assess the Applicant’s 4th disability viz, Comminuted Fracture (Lt) Calcicle (Optd) at 20%;*
- (d) *Issue/pass an Order or direction to the Respondents to assess the composite disability of the Applicant at 100% for life;*
- (e) *To direct the Respondents to grant the applicant with the 100% disability element of pension from the date of his superannuation i.e. 31.12.2022;*
- (f) *to direct the Respondents to pay the applicant arrears of disability pension from his date of superannuation i.e. 31.12.2022 along with interest @12% per annum till its payment to the Applicant; and*
- (g) *Pass any other or such further order or orders as deemed fit to this Hon’ble Tribunal in order to secure the ends of justice in favour of the Applicant.*

2. Briefly stated, applicant was commissioned in the Indian Air Force on 17.12.1988 and retired on 31.12.2022 in Low Medical Category. The applicant is in receipt of Service Pension. Before retirement from service, the Release Medical Board (RMB) held at Air Force Station, Kanpur on 13.05.2022 assessed his disabilities (i) **'PRIMARY HYPERTENSION I10.0, Z09.0'** @30%, (ii) **'TYPE-2 DIABETES MELLITUS E11, Z09.0'** @30%, (iii) **'DYSLIPIDEMIA E78.4, Z09.0'** @5%, (iv) **'COMMINUTED FRACTURE (LT) clavicle (OPTD) S42.0, Z09.0'** @15% and (v) **'CHRONIC KIDNEY DISEASE STAGE III (FRESH) N18'** @40%, **composite disabilities @76.32% for life** and opined the first, second, third and fifth disabilities to be neither attributable to nor aggravated (NANA) by service and the fourth disability as **aggravated by service**. The applicant's claim for grant of disability pension was rejected vide letter dated 23.03.2023. The applicant preferred First Appeal which too was rejected vide letter dated 06.10.2023. 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. Although the applicant's fourth disability has been opined as aggravated by service by the RMB but it's

degree of disability has wrongly been assessed @15%. The other diseases of the applicant were contracted during the service, hence they are also 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 100%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @76.32% for life have been regarded as NANA by the RMB except fourth disability which has been regarded as aggravated by service but it's degree of disability has been assessed @15% which is less than @20%, 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 percent or over may, on retirement, be awarded a 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 contended that the applicant had family history of Hypertension in his both parents vide specialist opinion dated 03.10.2001. In the background of genetic loading risk factor for Hypertension the applicant was

initially detected to have Essential Hypertension and was placed in low medical classification A4G4 (Temp) (T-24) vide AFMSF-15 dated 03.10.2001. His diagnosis Essential Hypertension was revised as Primary Hypertension vide AFMSF-3B dated 06.06.2008. In the background of older age the applicant was detected to have disabilities Type-II Diabetes Mellitus and Dyslipidemia and was placed in low medical classification A4G4 (Temp) (T-24) vide AFMSF-15 dated 22.07.2010. The applicant was detected to have disability Comminuted Fracture Left Clavicle (Optd) and was placed in low medical classification AMG4 (Temp) (T-24) vide AFMSF-15 dated 03.11.2014. The applicant was detected to have disability Chronic Kidney Disease Stage – II and was placed in low medical classification A4G4 (Permanent) vide AFMSF-16 dated 03.11.2014. 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 two folds:-

- (a) Whether the first, second, third and fifth disabilities of the applicant are also 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 and fifth disabilities i.e. **'PRIMARY HYPERTENSION I10.0, Z09.0'**, **'TYPE-2 DIABETES MELLITUS E11, Z09.0'** and **'CHRONIC KIDNEY DISEASE STAGE III (FRESH) N18'** are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in September, 2001, July, 2010 and May, 2022 respectively while posted in Peace locations (Adampur, Hindon and Kanpur), not due to stress and strain of service and as per specialist opinion fifth disability is possibly related to Hypertension or CTID and the applicant is an old case of Hypertension, Diabetes Mellitus and Dyslipidemia, therefore, applicant is not entitled to disability element of disability pension for these disabilities. 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. 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 17.12.1988 and the first, second and fifth disabilities have started after more than 12, 21 and 33 years of Air Force service respectively i.e. September, 2001, July, 2010 and May, 2022. 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 and fifth disabilities of the applicant should be considered as aggravated by Air Force service.

8. However, with regard to third disability i.e. '**DYSLIPIDEMIA**' we agree with the opinion of the RMB as NANA as it is a metabolic disease with lifestyle disorder and excessive intake of saturated fats with no causal connection to service.

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 and fourth and fifth disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first disability is @30%, second disability is @30%, third disability is @5% which is held as NANA, fourth disability is @15% and fifth disability is @40%, composite disabilities is @76.32 for life, for which we are of the view that there is some overlapping. Accordingly, we hold that composite assessment of first, second, fourth and fifth disabilities is less than @75% 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 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. 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 @75% 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. 1325 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. Be it mentioned that the fourth disability has already been regarded as aggravated by service. The first, second and fifth disabilities of the applicant are held as aggravated by Air Force Service. The third disability is held as NANA as has been opined by the RMB. The applicant is entitled to get disability element less than @75% 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 @75% 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.

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

(Justice Anil Kumar)
Member (J)

Dated : 28 February, 2025

AKD/-