

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 374 of 2024**Friday, this the 07<sup>th</sup> day of February, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Sgt. Priyank Singh Chauhan (Retd) (No. 781535B), Permanent residing at :- House No. 56, Ward – 16, Buddh Bazar, Rly. Stn. Road, PO – Gajrule, District – Amroha, Uttar Pradesh-244235.

**..... Applicant**

Ld. Counsel for the : **Shri Raj Kumar**, Advocate.  
Applicant **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. Chief of Air Staff, Air HQ (Vayu Bhawan), Rafi Marg, New Delhi.
3. Dte. Of Air Veterans, Air HQs, SMC Building (First Floor), Subroto Park, New Delhi-110010.
4. JCDA, Subroto Park, New Delhi-110010.

**.....Respondents**

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
Respondents. Central Govt. 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) *Direct respondents to grant disability element of pension for disability No. (ii) to disability No. (iii) duly rounded off to 75% for life w.e.f. his date of discharge i.e. 31.12.2020.*
- (b) *Direct the respondents to grant the disability element of pension for life instead of five years as granted vide PPO No. 34920201294 for the disability PIVD L5-S1 (Old) M51.0, Z09.0.*
- (c) *Direct respondents to pay the due arrears of disability element of Pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
- (d) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 14.12.2000 and discharged from service on 31.12.2020 in Low Medical Category on completion of terms of engagement after rendering 20 years and 18 days of regular service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at 15 Wing, Air Force Station, Bareilly on 04.08.2020 assessed his disabilities (i) **‘PIVD L5-S1 (OLD) M51.0, Z09.0’ @20% as aggravated by service,**

(ii) **'POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09'** @20% as neither attributable to nor aggravated (NANA) by service and (iii) **'DIABETES MELLITUS TYPE-II (OLD) E11, Z09'** @20% as NANA by service, **composite disabilities @50% for five years.** Accordingly, the applicant was granted disability element of disability pension @20% rounded off to @50% for five years for the first disability with effect from 01.01.2021 to 31.12.2025. However, the applicant was not granted disability element of disability pension for the second and third disabilities. The applicant preferred First Appeal dated 24.07.2023 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 first disability of the applicant has been assessed @20% for five years and regarded as aggravated by service by the RMB. Accordingly, the applicant was granted disability element of disability pension @20% rounded off to @50% for five years. The second and third disabilities of the applicant i.e. **'POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09'** and **'DIABETES MELLITUS TYPE-II (OLD) E11, Z09'** were also contracted during the service, hence they are also attributable to and aggravated by Air Force

Service. He further contended that the applicant was granted disability element of disability pension @20% rounded off to 50% for first disability only for five years whereas the applicant is entitled for the grant of disability element of disability pension @50% rounded off to 75% for life. The duration of the disablement was assessed for five years only, it is brought forth from the Judgment of the Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India** (Civil Appeal No. 5970/2019), decided on 28.11.2019, that the decision qua the assessment of disability would be for life unless the individual himself request for a review. The applicant's disabilities are in permanent nature, hence, the applicant is entitled for disability element of disability pension for life instead of five years in the light of abovementioned judgment passed by the Hon'ble Apex Court. 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% for life.

4. On the other hand, Ld. Counsel for the respondents contended that the first disability of the applicant has been regarded as attributable to or aggravated by service, hence, he was granted disability element @20% rounded off to 50% for five years. He further contended that second and third disabilities i.e. **'POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09'** and **'DIABETES MELLITUS TYPE-II (OLD) E11, Z09'** of the applicant @20% each for five

years 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”* applicant is not entitled to disability element of disability pension for second and third disabilities. He further submitted that the applicant initially detected to have second and third disability vide AFMSF dated 11.01.2017 and 19.09.2017 respectively. Thereafter, the applicant was reviewed periodically for all the disability and was placed in medical classification A4G4 (Permanent) vide AFMSF-15 dated 06.03.2018. As claimed, the applicant's First Appeal has not been received by the respondents. With regard to second and third disabilities, Ld. Counsel for the respondents contended that Para 5 of Entitlement Rules for Casualty Pensionary Awards in Armed Forces Personnel, 2008 stipulates that *“The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military serviced does not per se establish attributability to or aggravation by military service.”* 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 three folds:-

- (a) Whether the second disabilities i.e. '**POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09**' and '**DIABETES MELLITUS TYPE-II (OLD) E11, Z09**' of the applicant are also attributable to or aggravated by Air Force Service?
- (b) Whether the applicant's disabilities are of permanent nature and the applicant is entitled for grant of disability element of disability for life or for five years?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for second and third disabilities also?

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 second and third disabilities i.e. **‘POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09’** and **‘DIABETES MELLITUS TYPE-II (OLD) E11, Z09’** are neither attributable to nor aggravated (NANA) by service on the ground of onset of second and third disabilities in October, 2016 and September, 2017 while posted in Peace location (Bareilly), 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 enrolled in Indian Air Force on 14.12.2000 and the first and second disabilities have started after more than 15 and 16 years of Air Force service respectively i.e. in October, 2016 and September, 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 the second and third disabilities i.e. **“POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09’** and **‘DIABETES MELLITUS TYPE-II (OLD) E11, Z09’** of the



applicant should also be considered as aggravated by Air Force service.

8. With regard to duration of assessment we find that the RMB has assessed the composite disabilities @50% for five years. Nothing could be shown by the applicant to establish that his disabilities are of permanent nature as has been held by the Hon'ble Apex Court in the case of **Commander Rakesh Pande Vs. Union of India** (*supra*), as such the applicant is entitled for the grant of disability element of disability pension for five years only for all the disabilities. However, the applicant is entitled for the Re-Survey Medical Board (RSMB) after the expiry of five years duration from the next date of his discharge.

9. 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 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 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."*

10. 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.

11. 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(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 @50% for life to be rounded off to @75% for five years may be extended to the applicant from the next date of his discharge.

12. In view of the above, the **Original Application No. 374 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the second and third disabilities are set aside. Be it mentioned that the applicant's first disability has already been regarded as aggravated by Air Force service and the applicant is getting disability element @20% rounded off to 50% for five years from the next date of his discharge. The second and third disabilities i.e. '**POLYCYTHEMIA (LOW EPO, NORMAL BONE MARROW & JAK-2 NEGATIVE) (OLD) D45, Z09**' and '**DIABETES MELLITUS TYPE-II (OLD) E11, Z09**' of the applicant are also held as aggravated by Air Force Service. The applicant is held entitled to get disability element @50% for five years which would be rounded off to 75% for five years from the next date of his discharge. The respondents are

directed to grant disability element to the applicant @50% for five years which would stand rounded off to 75% for five years from the next date of his discharge. The disability element of disability pension paid @50% from the next date of applicant's discharge shall be adjusted from the arrears. Further, after expiry of five years from the date of his discharge, the respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension for all the disabilities. 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.

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

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

Dated : 07 February, 2025

AKD/-