

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 528 of 2019**

Monday, this the 05<sup>th</sup> day of July, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Meena Nigam, Widow of No. 642249 Ex AC Naresh Chandra Nigam, S/o Sri (Late) Bajrang Sahai Nigam, R/o H.No. 128/934 Y Block, Near Subhash Public School, Kidwai Nagar, Kanpur (U.P.).

..... Applicant

Ld. Counsel for the Applicant : **Shri Virat Anand Singh**, Advocate and  
**Shri Ashish Kumar Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi-110106.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Jt. CDA (AF), C/o AFCAO, Subroto Park, New Delhi-110010.
5. PCDA (P) (Air Force), Draupadighat, Allahabad (UP) – 211014.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Shyam Singh**,  
Central Govt. Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 quash or set aside the Respondents letter dated 21.10.1981 (Annexure A-1 of OA).*
- (B) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 11.03.1981 (Date of discharge : 10.03.1981) with all consequential benefits including rounding off benefits in terms of Govt of India letter dated 31 Jan 2001 and Judgment passed by Hon’ble Apex Court in case of Ram Vatar Vs Uol & Others.*
- (C) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant’s husband (Ex. AC Naresh Chandra Nigam) was enrolled in the Indian Air Force on 08.03.1973 and was invalided out from service on 10.03.1981 in Low Medical Category on being found medically unfit (Schizophrenia) after rendering 08 years and 03 days of regular service. The applicant’s husband claim for grant of disability pension was rejected vide letter dated 21.10.1981. The applicant’s husband preferred Appeal but of no avail. It is in this perspective that the applicant’s husband has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant's husband 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 disease of the applicant's husband was contracted during the service, hence it is 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's husband be granted disability pension as well as arrears thereof, as applicant's husband is also entitled to disability pension and its rounding off to 50% presuming that applicant's husband disability was @20% or over.

4. On the other hand, Ld. Counsel for the respondents contended that all service and medical documents in respect of applicant's husband were destroyed by Board of Officers after stipulated period of retention as per Appendix 'S' of Regulations of Indian Air Force, 1964. Only minimum information in the form of Long Roll (LR) is available. The applicant's husband was discharged from service under the clause "on found medically unfit (Schizophrenia)". The claim for grant of disability pension of the applicant's husband was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad vide order dated 21.10.1981 on the ground that the disability was not attributable to

Air Force 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 records and we find that the questions which need to be answered are of three folds:-

- (a) Whether applicant's husband disability was @20% or over:
- (b) Whether the disability of the applicant's husband is attributable to or aggravated by Air Force Service?
- (c) Whether the applicant's husband is entitled for the benefit of rounding off the disability pension?

6. In the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) STPL (WEB) 468, Hon'ble Apex Court has observed as under:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems*

*to us to be logically so. **Fourthly, wherever a member of the Armed Forces is invalidated out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.***

7. It is not disputed that the medical records of the applicant's husband have been destroyed as per extant rules. However, the records for invalidment out service i.e. "on found medically unfit (Schizophrenia) has been recorded in the Long Roll. Further since the applicant's husband was invalidated out from service it can be assumed that his disability must have been above twenty percent.

8. 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 invalidated 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)."*

9. In view of the settled position of law on attributability, we find that the Principal Controller of Defence Accounts (Pension), Allahabad has denied disability pension stating that disability of applicant's husband is not attributable to Air Force service. The applicant's husband was enrolled in Indian Air Force on 08.03.1973

and was invalided out from service on 10.03.1981 after rendering 08 years and 03 days of service. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant's husband in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the applicant's husband should be considered as aggravated by Air Force service.

10. 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."*

11. It is also 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, Hon'ble Apex Court has observed:

*"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."*



12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered view that benefit of rounding off of disability pension presuming minimum @20% for life to be rounded off to 50% for life may be extended to the applicant's husband till his death from three preceding years from the date of filing of the Original Application.

13. In view of the above, the Original Application No. 528 of 2019 deserves to be allowed, hence **allowed**. The impugned order dated 21.10.1981, annexed as Annexure No. A-1 (Page No. 10) of Original Application, is set aside. The disability of the applicant's husband is held as aggravated to by Air Force Service. The respondents are directed to grant disability pension to the applicant's husband presumed minimum @20% for life which would stand rounded off to 50% till his death i.e. upto 28.01.2021. Respondents are further directed to grant family pension to the applicant in respect of service element only w.e.f. the date of death of her husband i.e. 28.01.2021 for life. However, arrears of disability pension will be restricted to three years preceding the date of filing of Original Application. The date of filing of Original Application is 13.03.2019. 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.

14. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated : 05 July, 2021

AKD/-