

**RESERVED**  
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 535 of 2018**

Friday, this the 29<sup>th</sup> day of March, 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

No. 625095H Ex. Warrant Officer Rabindra Singh, Son of Late Ram Bahadur Singh, Resident of EWS 12, Shastripuram Vistar, Near Madhav Dham, P.O. Gorakh Nath, District Gorakhpur (U.P.)-273015.

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate.  
Applicant

Versus

1. Chief of Air Staff, New Delhi-110011.
2. Directorate of Air Veterans, Air Headquarters, Suborot Park, New Delhi.
3. Union of India Through Secretary, Ministry of Defence, New Delhi-110011.

.....**Respondents**

Ld. Counsel for the : **Shri R.K.S. Chauhan**,  
Respondents. Central Govt. Counsel

**ORDER**

**“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

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 the rejection order of Air Head Quarter Directorate of the Air Veterans Subroto Park, new Delhi Letter No.AIR HQ/99798/1/625095/07/17/ DAV(DP/RMB) dated 17 Mar 2017 with all the consequential benefit to the Applicant.*
- (b) To direct the respondent to pay disability pension as declared by the Medical Board held in the month of Sept 2016 40% for life.*
- (c) To grant benefit of rounding of (Broad – Banding) as contemplated in Government of India Policy Letter No.1(2)/97//D(Pen-C) effective from 01 Jan 1996.*
- (d) To direct the respondent to decide the representation of the Applicant dated 12 Jul 2017 within time frame to be fixed by this Hon’ble Tribunal preferably 1 month as over 7 month have already elapsed.*
- (e) To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (f) Award cost of the petition.”*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Air Force on 15.03.1980 and was discharged on 31.08.2017 (Afternoon) in Low Medical Category on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at 505 Signal Unit (Station Medical Centre, Air Force Station, Memora) on 19.09.2016

assessed his disabilities '**(1) PRIMARY HYPERTENSION I 10.9 @30% for life and (2) TYPE -2 DIABETES MELLITUS E-11' @20% for life, composite @40% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. In the column of reason for the first disability it is stated that this is a life style related disorder, sedentary life style, smoking, excess body weight and alcohol. and for the second disability it is stated that this is a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin. The onset of both the disabilities are in peace location (Ojhar). The claim of the applicant for grant of disability was rejected vide order dated 17.03.2017. Feeling aggrieved by the said rejection order the applicant preferred First Appeal dated 12.07.2017 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 diseases of the applicant were 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 be granted disability pension as well

as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @40% composite for life have been regarded as NANA by the RMB, hence applicant is not entitled to disability pension and his claim for disability pension has been correctly rejected. 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. The questions which need to be answered are of two fold :-

- (a) Whether the disability of the applicant is attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his 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 disabilities '**(1) PRIMARY HYPERTENSION I 10.9 and (2) TYPE -2 DIABETES MELLITUS E-11**' are neither attributable to nor aggravated (NANA) by service as the reason for the first disease is a life style related disorder, sedentary life style, smoking, excess body weight and alcohol for the second disease is shown as a metabolic disease characterised by hyperglycemia due to absolute/relative deficiency of insulin and the onset of both the disabilities are in peace location (Ojhar). This reasoning of RMB is not convincing and doesn't reflect the complete truth on this matter. The applicant was enrolled in Indian Air Force on 15.03.1980 and the disabilities have started after more than thirty years of Air Force service i.e. in the year 2010. After considering all the issues we are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant for his first disability i.e. '**PRIMARY HYPERTENSION I 10.9**' in view of the law settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs Union of India & Ors*** (supra) and his disability "**PRIMARY HYPERTENSION I 10.9**" should be considered as aggravated by Air Force Service. We agree with the opinion of RMB that second disability i.e. '**TYPE – 2 DIABETES MELLITUS E-11**' is NANA.

8. 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 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."*

9. 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)***, we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant with effect from the date of his discharge i.e. 01.09.2017.

10. In view of the above, the **Original Application No. 535 of 2018** deserves to be allowed, hence **allowed**. The impugned order dated 17.03.2017, enclosed as Annexure No. 1 of this Original Application, is set aside. The respondents are directed to grant disability element of pension to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. date of discharge of the applicant i.e. 01.09.2017. The respondents are 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 @ 9% per annum till actual payment.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

Dated: March, 2019

AKD/-

**(Justice S.V.S. Rathore)**  
**Member (J)**