

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 577 of 2021**

Monday, this the 07<sup>th</sup> day of March, 2022

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

Ex Sgt Amit Asthana (Service No 796207-S) House No 2/963,  
Bharwara, Vigyan Khand, Gomti Nagar, Uttar Pradesh-226028.

..... Applicant

Ld. Counsel for the: **In person**  
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, Room No. 101  
A, South Block, DHQ PO-New Delhi-110011.

2. Chief of the Air Staff, AIR HQ, Vayu Bhawan, New Delhi-110011.

3. Directorate, Dir of Air Veteran, Subroto Park, New Delhi-110011.

4. JCDA (Air Force), New Delhi C/o Air Force Central Account Office,  
Subroto Park, New Delhi-110010.

.....Respondents

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

**ORDER (Oral)**

1. This O.A. has been filed under Section 14 of the Armed Forces  
Tribunal Act, 2007 by the applicant for grant of following reliefs:-

(i) To issue/pass an order to set-aside/quash the order No Air  
HQ/99798/1/796207/05/19/DAV (DP/RMB) dated 08.01.2020  
passed by respondent No 3.

(ii) To issue/pass an order or direction to the respondents to  
grant the disability pension @ 40% for life from date of discharge  
i.e. 31.05.2019 alongwith 12% interest on arrear in light of Hon’ble  
Apex Court judgment.

(iii) To issue/pass an order or direction to the respondents to  
grant the benefit of rounding off disability pension @ 40% to @  
50% for life from date of discharge i.e. 31.05.2019 alongwith 12%  
interest on arrear in light of letter dated 31.01.2001 and Hon’ble  
Apex Court judgment.

(iv) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(v) To allow this original application with costs.

2. Briefly stated, applicant was enrolled in Indian Air Force on 06.05.1999 and was discharged from service on 31.05.2019 in Low Medical Category A4G4 (Permanent) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) held at Air Force Station, New Delhi on 30.04.2019 assessed his disabilities '(i) Diabetes Mellitus Type-II (old) (ii) Prolapsed Inter Vertebral Disc C5-C6, C6-C7 with Compressive Myelopathy (fresh) and (iii) Vitamin B<sub>12</sub> + Iron Deficiency Anaemia (fresh)' @ 40% neither attributable to nor aggravated (NANA) by military service. The initial claim of disability element of pension was rejected vide order dated 08.01.2020. Against rejection of disability element of pension, applicant preferred first appeal dated 12.05.2020 which has not been decided even after sending a reminder dated 11.07.2021. It is in this perspective that the applicant has preferred the present O.A. for grant of disability element of pension.

3. The applicant pleaded that at the time of enrolment, he was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Indian Air Force. The diseases/disabilities of the applicant was contracted during the service, hence it is attributable to and aggravated by Military 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 pension as well as arrears thereof. He further submitted that in similar cases, the Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability element of pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. '(i) Diabetes Mellitus Type-II (old) (ii) Prolapsed Inter Vertebral Disc C5-C6, C6-C7 with Compressive Myelopathy (fresh) and (iii) Vitamin B<sub>12</sub> + Iron Deficiency Anaemia (fresh)' have been assessed as 40% by RMB. However, since the aforesaid disabilities were opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability element of pension was not considered. He pleaded for dismissal of the O.A.

5. We have heard the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings and we find that the questions which need to be answered are of two folds :-

(a) Whether the disability of applicant is attributable to or aggravated by military service?

(b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

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/aggravation to the applicant only by endorsing that the disabilities '(i) Diabetes Mellitus Type-II (old) (ii) Prolapsed Inter Vertebral Disc C5-C6, C6-C7 with Compressive Myelopathy (fresh) and (iii) Vitamin B<sub>12</sub> + Iron Deficiency Anaemia (fresh)' to be neither attributable to nor aggravated (NANA) by military service and not connected with service as they took place while serving with Air HQ, New Delhi. The disabilities were originated in May 2017,

July 2017 and September 2018 respectively i.e. after about 18 years from the date of his enrolment. We are, therefore, of the considered opinion that the reasons given in RMB for declaring diseases/disabilities as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by **Dharamvir Singh** (supra) and the disabilities of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability element of pension from the next date of his discharge i.e. 01.06.2019.

8. We have observed that the respondents in RMB have not mentioned period of disability element, therefore the percentage of disability element is deemed @ 40% for life.

9. Further, the law on the point of rounding off of disability element of pension is no more RES INTEGRA in view of the 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). Thus in light of this Judgment the disability element of the applicant @40% for life shall stand rounded off to 50% for life.

10. In view of the above, the **Original Application No. 577 of 2021** deserves to be allowed, hence, **allowed**. The impugned order dated 08.01.2020 enclosed as Annexure No. A-1 of the Original Application is set aside. The disabilities of the applicant are held as aggravated by military service. The applicant is entitled to get disability element of pension @40% for life to be rounded off to 50% for life from the next date of his discharge i.e. 01.06.2019. Respondents are further directed to give effect to the order within four months from the date of receipt of a

certified copy of this order failing which the respondents shall have to pay interest @ 6% per annum till the date of actual payment.

11. No order as to costs.

12. Miscellaneous applications, pending if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 07.03.2022  
rathore