

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

Original Application No. 76 of 2023

Monday, this the 22nd day of May, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

HFO Biswas Kumar Gupta (Retd) (692131-T), S/O Late Shri Ramesh Prasad Gupta, R/O: Kunbiana, Mohalla: Rajapur, Dist: Prayagraj (Allahabad), State: Uttar Pradesh, PIN: 211001.

---- Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi, Advocate holding brief of Wg Cdr Ajit Kakkar (Retd), Advocate**

Versus

1. Union of India, Through the Secretary, Ministry of Defence, DHQ PO, New Delhi - 110001.
2. Principal Director, Directorate of Air Veteran, Subroto Park, New Delhi - 110010.
3. JCDA Subroto Park, New Delhi - 110010

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal, Advocate**
Central Govt. Counsel.

ORDER(ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) To direct the respondents to bring all service and medical records of the applicant including RMB.*
- “(b) To grant disability pension to the Applicant w.e.f. 01.12.2021.*
- “(c) To direct the Respondents to grant broad banding of the disability pension w.e.f. 01.12.2021.*
- “(d) To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension of the Applicant.*
- “(e) To direct the Respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12% from the date of discharge w.e.f 01.12.2021.*
- “(f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”*

2. The facts of the case, in brief, are that applicant was enrolled in the Indian Air Force on 29.12.1983 and was discharged from service on 30.11.2021 (AN) in low medical category after serving more than 37 years of service. The Release Medical Board (RMB) held at AFS Kanpur on 06.03.2021 assessed his disabilities (i) **“DIABETES MELLITUS TYPE II E11.0” @ 20% for life** and (ii) **RENAL CALCULI LT N20.0 @ 15% for life**. Composite assessment is 30% for life. RMB has opined that the disabilities of

the applicant were neither attributable to nor aggravated by military service (NANA). The applicant's claim for grant of disability pension was rejected by the respondents vide order dated 15.11.2021. Thereafter, applicant submitted an appeal dated 18.02.2022 which is still pending with the respondents. Being denied by disability pension, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India and others***, (2013) AIR SCW 4236 and ***Sukhvinder Singh vs. Union of India & Others*** (2014 STPL (Web) 468 SC and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disabilities arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability pension @ 50%. Prayer for rounding off

of disability pension from 30% to 50% has been made in the Original Application.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant compositively assessed @ 30% for life has been regarded as NANA by the RMB as the disability is not due to stress and strain of service. Onset of disability is in peace area. The disability has no casual connection to Air Force service. As such, under the terms of Regulation 153 of Pension Regulations for the IAF, 1961 (Part – I) applicant is not entitled to disability element of disability pension. 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 of two folds:-

- (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 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 disability '**TYPE-II DIABETES MELLITUS** and **RENAL CALCULI LT** are neither attributable to nor aggravated (NANA) by service on the ground that disability is not due to stress and strain of service. Onset of disability is in peace area. The disability has no casual connection to Air Force service, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Air Force on 29.12.1983 and the disability has started after more than 32 years of Air Force service i.e. in Apr 2016. 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 disability of the applicant should be considered as aggravated by Air Force service.

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 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 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. In view of the above, the **Original Application No. 76 of 2023** deserves to be allowed, hence allowed. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as aggravated by Air Force Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the date of discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the date of discharge. 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.

10. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 22nd May, 2023
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