

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 224 of 2023**Thursday, this the 11th day of May, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**

No. 627185-K Ex. Sgt. Anil Kumar Giri, Son of Late Ram Chandra Giri, resident of Flat NO.N/702, Trillium Magarpatta City, Pune. Presently residing at C/o PraveenKumar Singh, Plot No. 164, Vinayakpur, Rajeev Nagar, District – Kanpur Nagar (U.P.), Pin-208024.

..... Applicant

Ld. Counsel for the : **Shri Sudhir Kumar Singh**, Advocate
Applicant **Shri Abhishek Singh**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi, PIN-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi, Pin-110011.
3. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Jt. CDA, AF, Subroto Park, New Delhi, PIN-110010.

.....Respondents

Ld. Counsel for the : **Shri Devesh Kumar Mishra** , Advocate
Respondents. 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 :-

- (I) *To quash the order dated 22.08.2002, passed by the respondents which is annexed as Annexure No. 1 to this Original Application.*
- (II) *To pass an order or direction commanding the respondents to grant the benefit of disability pension to the applicant from the next date of discharge i.e. 01.11.2001 along with interest @12% per annum till the actual realization of aforesaid amount.*
- (III) *To pass an order or direction commanding the respondents to grant the benefits of rounding off the disability pension up to tune of 50%, in terms of Govt. of India letter dated 01.09.2011 and various Judgment of Apex Court as well as this Hon'ble Tribunal.*
- (IV) *Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.*
- (V) *Allow the Original Application with cost.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 24.10.1981 and discharged on 31.10.2001 in Low Medical Category on fulfilling the conditions of his enrolment after rendering 20 years and 08 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at 23 FD, Air Force on 31.01.2001 assessed his disability '**ESSENTIAL HYPERTENSION (OLD) 401**' @15-19% for five years and opined the disability to be neither attributable to nor aggravated by service (NANA). The applicant's claim for the grant of disability element of disability pension was rejected vide letter dated 22.08.2002. The applicant preferred First Appeal dated 25.05.2022 which too was

rejected vide letter dated 17.06.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that the RMB has been wrongly assessed the applicant's disability as NANA @15-19% for five years. He submitted 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 disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. He further submitted that the disease with which applicant suffers is a 'Essential Hypertension' and per para 21 (h) (page 151) of the Guide to Medical Officers (Military Pensions) 2002 the degree of disablement in case of 'Essential Hypertension' cannot be assessed less than 30%. 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 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that the RMB has assessed the applicant's disability @15-19% for five years as NANA by service, since the disability element is less than 20% as NANA, therefore, condition for grant of disability pension is not fulfilled in terms of Regulation 153 of

Pension Regulations for the Indian Air Force, 1961 (Part – I). Therefore, the respondents have rightly denied the benefit of disability element of disability pension to applicant. He pleaded for dismissal of 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 three folds:-

- (a) Whether the assessment of 15-19% of disability in the case of 'Essential Hypertension' is in accordance with extant rules/guidelines?
- (b) Whether the disability of the applicant is attributable to or aggravated by Air Force service?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On careful scrutiny of the documents, we find that the RMB has assessed the applicant's disability @15-19% for five years as NANA by service. In this regard when we see the said provisions, we observe that in the para 21 (h) (page 151) of the Guide to Medical Officers (Military Pensions) 2002 it is clear that degree of disablement in case of 'Essential Hypertension' cannot be less than 30%. Therefore, we are of the view that applicant's disability

should be assessed @30% in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

7. 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)."

8. 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 '**ESSENTIAL HYPERTENSION**' is neither attributable to nor aggravated (NANA) by service on the ground of constitutional in nature, 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 element of disability pension to applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Air Force on 24.10.1981 and the disability has started after more than 17 years of Air Force service i.e. on 02.08.1999. 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.

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 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 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 invalided 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. 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 @ 30% for five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his discharge.

11. Since the applicant's SMB was valid for five years from the next date of his discharge, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board (RSMB) for him to decide his future eligibility to disability element of disability pension.

12. In view of the above, the **Original Application No. 224 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held @30% for five years as aggravated by Air Force Service. The applicant is entitled to get disability element @30% for five years which would be rounded off to 50% for five years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for five years which would stand rounded off to 50% for five years from the next date of his

discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. 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.

**(Vide Admiral Atul Kumar Jain)
Member (A)**

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

Dated : 11 May, 2023

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