

**Court No. 1**

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

**ORIGINAL APPLICATION No. 1273 of 2023**

Monday, this the 11<sup>th</sup> day of November, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Sqn. Ldr. Ritu (33080-F) (Retd) C/o Devdutt Sharma, R/o near Raju Press Wala, LIG 2A, 152 Avas Vikas, 1<sup>st</sup> DM Road, Bulandshar, Uttar Pradesh-203001.

**..... Applicant**

Ld. Counsel for the : **Shri Raj Kumar Mishra**, Advocate  
 Applicant **Ms. Upasna Mishra**, Advocate  
**Shri Pradeep Kumar Mishra**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi-110106.
3. The Principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi-110010.
4. The Joint Controller of Defence Accounts (Air Force), 2<sup>nd</sup> Floor, AFCAO Building, Subroto Park, New Delhi-110010.

**.....Respondents**

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

## **ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, 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 issue/pass an order or direction of appropriate nature to the respondents to set aside/quash the impugned order Rejection of Pension claim vide No.Air HQ/99797/51015/Dis/O/DAV-1 (B) dated 30.06.2023, along with Rejection of first appeal vide No. Air HQ/99797/5101/Dis/O/DAV-1(B) dated 26.09.2023 and proceedings of Release Medical Board dated 14.12.2022 inasmuch as to declare the disability of “Cervical Degenerative with Ossified posterior Longitudinal Ligament C6-C7, Degenerative Disc Disease L4-L5, L5-S1 and Low Lying Cord with Fibrolipoma of Filum Terminale”, suffered by the applicant as NANA.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date of next to the date of discharge i.e. 07.01.2023 and interest thereon at the rate of 18% per annum.*
- (c) *Issue/pass an order or direction to the respondents to round off the disability pension from 20% for life to 50% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.*
- (d) *Issue/pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including the cost of the litigation.*

(e) *Allow this application with exemplary costs.*

2. Briefly stated, applicant was commissioned as Short Service Commissioned Officer in the Indian Air Force on 07.01.2013 and released on 06.01.2023 in Low Medical Category on completion of her SSC tenure. Before release from service, the Release Medical Board (RMB) held at Halwara/SNC 9 Wing on 01.12.2022 assessed his disabilities (i) '**DEGENERATIVE DISC DISEASE L4-L5, L5-S1 (OLD) (ICD M 51, Z09.0)**' @20% and (ii) '**LOW LYING CORD WITH FIBROLIPOMA OF FILUM TERMINALE (OLD) (OLD0 (ICD M 51, Z09.0)**' as Nil Hereditary Condition and '**CERVICAL DEGENERATIVE CHANGES WITH OSSIFIED POSTERIOR LONGITUDINAL LIGAMENT C6-7 (OLD) (ICD M47.8)**' as Nil, **composite disabilities @20% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 30.06.2023. The applicant preferred First Appeal which too was rejected vide letter dated 26.09.2023. 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 commission, the applicant was found mentally and physically fit for service in the Air Force and there is no note in the service documents that she was suffering from any disease at the time of commission in Air Force. The diseases of the applicant were

contracted during the service, hence they are attributable to and aggravated by Air Force Service. Ld. Counsel for the respondents further submitted that the onset of first disease was at Adampur. In January, 2015, the applicant was supervising the preparation of the fighter aircraft for flying and while coming down from aircraft by aircraft ladder, the applicant slipped from the ladder and fell on the tarmac on 223 Squadron operational unit while on duty and he was admitted in Military Hospital, JRC from 25.02.2015 to 15.03.2015 in Orthopaedics Department. MRI was done on 26.02.2015. On 10.10.2015 the Injury Report was raised which opined it as attributable to service, where statement of Commanding Officer (CO) in Injury Report confirmed that the injury occurred while on duty. The onset of second and third disabilities was while working at Halwara. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension which include service element as well as disability element and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @20% for life has been regarded as NANA by the RMB, hence as per Regulation 37 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“An officer who is retired from Air Force Service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or over may,*

*on retirement, be awarded disability pension consisting of a service element and a disability element in accordance with the regulations in this section”* the applicant is not entitled to disability pension. He further submitted that there is no documentary evidence of any injury. The applicant was evaluated at Military Hospital, Jalandhar. There was no neurological deficit. Her MRI Spine showed disc bulge at L4-5 and L5-S1. She was managed conservatively and placed in LMC for Degenerative Disc Disease L4-L5, L5-S1. She was detected to have low lying cord with fibrolipoma of filum terminale during follow up examination in June, 2019. She was advised for surgery, however, she was unwilling for the same. The applicant was placed in LMC and follow up. The applicant complained of pain in neck in November, 2021. The applicant was diagnosed as a case of Cervical Degenerative Changes with Ossified Posterior Longitudinal Ligament C6-7 and was placed in LMC. She did not offer any fresh complaint at the time of RMB. Ageing, environmental and genetic factors predispose an individual to the disease. Other factors include prior surgery, contact sport atherosclerosis and occupation. Rigours of training, regimental duties and physical activities(long marching, sentry duties, patrolling, Para jumping, active operational duties) can overtly/covertly, cause continuous trauma to major weight bearing joints. Uncongenital climate and hill terrain can adversely affect the course of the disease. The disease is generally accepted on the basis of aggravation. Post traumatic cases will be considered

attributable. In the applicant's case, there is no evidence of being involved in strenuous physical activity in close relation with the detection of disabilities. The applicant was diagnosed at an early stage and was provided necessary medical assistance. The applicant was provided sheltered appointments from 2<sup>nd</sup> year of service till her release. 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 three folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Air Force Service?
- (b) Whether the Short Service Commissioned Officers are entitled for grant of disability pension?
- (c) Whether the applicant is entitled for the benefit of rounding off the 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 first and third disabilities '**DEGENERATIVE DISC DISEASE L4-L5, L5-S1 (OLD) (ICD M 51, Z09.0)**' and '**LOW LYING CORD WITH FIBROLIPOMA OF FILUM TERMINALE (OLD) (OLD0 (ICD M 51, Z09.0)**' are NANA by service on the ground of degenerative change and second disability i.e. '**CERVICAL DEGENERATIVE CHANGES WITH OSSIFIED POSTERIOR LONGITUDINAL LIGAMENT C6-7 (OLD) (ICD M47.8)**' is NANA by service on the ground of congenital disorder, therefore, applicant is not entitled to 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 are cryptic not convincing and doesn't reflect the complete truth on the matter. The applicant was commissioned in Indian Air Force on 07.01.2013 and the disabilities have started after more than 02, 06 and 08 years of Air Force service respectively i.e. in April, 2015, May, 2019 and July, 2021. 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 all the



three disabilities of the applicant should be considered as aggravated by Air Force service.

8. Further, consequent upon the issue of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter No. 1(9)/2006/D(Pen-C) dated 30.08.2006 and letter No. 16(01)/2012-D(Pen-Pol) dated 23.03.2015, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 23 dated 27.05.2015 wherein it is provided that *“in the case of aggravation too, service element of disability pension in respect of non-regular officers would be calculated after taking into account the full commissioned service rendered by them as calculated in the case of Regular Commissioned Officer. As such EC/SSC officers in aggravation cases would also be allowed the benefit of revision w.e.f. 30.08.2006 as allowed to attributable cases vide MoD letter dated 30.08.2006.”*

9. In view of the Circular No. 23 dated 27.05.2015 issued by the Principal Controller of Defence Accounts (Pension), Prayagraj the applicant is entitled for disability pension which include disability element as well as service element also.

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. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

12. 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/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of her release from service.

13. In view of the above, the **Original Application No. 1273 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 disabilities of the applicant are held as aggravated by Air Force Service. The applicant is entitled to get disability pension, which include service element as well as disability element, @20% for life which would be rounded

off to 50% for life from the next date of her release. The respondents are directed to grant disability pension, which include service element as well as disability element, to the applicant @20% for life which would stand rounded off to 50% for life from the next date of her release. 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 Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 11 November, 2024

AKD/-