

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1362 of 2023**

Wednesday, this the 13th day of November, 2024

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

Ex. Sgt. Saroj Kumar (Service No. 740743-B) S/o Late Shri Dhuman Singh, Residence of C/o Sri Vinayak Tiwari, Village – Rajpur (Neem Chhapara), Post Office & Police Station – Haldi, District – Ballia, Uttar Pradesh -277402.

..... Applicant

Ld. Counsel for the : **Shri Shiv Kant Pandey**, Advocate
 Applicant **Shri Amit Pandey**, Advocate
Ms. Nisha Pandey, Advocate

Versus

1. The Union of India, through Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi -110010.
2. The Chief of Air Staff, Air HQ Vayu Bhawan, Rafi Marg, New Delhi -110106.
3. Deputy Controller Defence Accounts (Air Force), Subroto Park, New Delhi -110010.
4. The Director, Directorate of Air Veterans, Air HQ, Subroto Park, New Delhi-110010.
5. Principal Controller of Defence Account (Pension), Draupadi Ghat, Near Sadar Bazar, Prayagraj, Uttar Pradesh -211014.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey**, 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 :-

- (i) *This Hon’ble Tribunal may be pleased to set aside impugned order Air HQ /99798/5/1st Appl/ 740743/DP/DAV dated 11.08.2023 passed by Respondent No.4 (Annexure A-4) whereby the Appeal of applicant has been rejected.*
- (ii) *This Hon’ble Tribunal may be pleased to set aside Part V of the RMB dated 15.09.2017, to the extent whereby disability has been held to be NANA and disability pension has been denied to applicant (Annexure A-1 to OA).*
- (iii) *This Hon’ble Tribunal may be pleased to set aside letter No. AIR HQ/99798/1/740743/07/18/DAV(DP/ RMB) dated 24 July 2018, whereby claim of disability pension has been denied (Annexure A-2 to OA).*
- (iv) *This Hon’ble Tribunal may be pleased to Grant Disability pension to applicant for disability, @30% to be rounded of 50%, wef 01 Aug 2018 and for life.*
- (v) *This Hon’ble Tribunal may be pleased to direct respondents to issue PPO, granting disability pension to applicant wef. 01.08.2018 and for life @30% to be rounded of 50%.*
- (vi) *This Hon’ble Tribunal may be pleased to direct respondents to pay entire arrears which accrued after the grant of disability pension to applicant.*
- (vii) *This Hon’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*

(viii) This Hon'ble Tribunal may award the cost of petition to applicant.

2. Briefly stated, applicant was enrolled in the Indian Air Force on 28.07.1992 and discharged on 31.07.2018 in Low Medical Category on fulfilling the conditions of his enrolment after rendering 26 years and 04 days of service. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at HQ EAC, Air Force on 15.09.2017 assessed his disabilities (i) **'PRIMARY HYPERTENSION (OLD) I 10, Z09'** @30% for life and (ii) **'DYSLIPIDEMIA (OLD) I 10, Z09.0'** @1-5% for life, **composite disabilities @30% 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 24.07.2018. The applicant preferred First Appeal 17.07.2023 which too was rejected vide letter dated 11.08.2023. 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 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 they are 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 element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @30% for life have been regarded as NANA by the RMB, hence as per Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over”* the applicant is not entitled to disability element of disability pension. He further submitted that the applicant was initially placed in low medical classification A4G4 (Temp) (T-24) for the aforesaid disabilities vide AFMSF-15 dated 06.06.2016. Thereafter, the applicant was reviewed periodically for the said disabilities and was placed in permanent medical classification A4G2 (Permanent) vide AFMSF-15 dated 15.09.2017. 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 two folds:-

- (a) Whether the disabilities of the applicant are 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 first disability '**PRIMARY HYPERTENSION**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of first disability on 31.05.2016 while posted in Peace location (Gandhinagar, HQ SWAC), 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 for the first disability is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous Air Force training and associated stress and strain of Air Force service. The applicant was enrolled in Indian Air Force on

28.07.1992 and the first disability has started after more than 23 years of Air Force service i.e. on 31.05.2016 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 first disability of the applicant should be considered as aggravated by Air Force service.

8. However, with regard to second disability i.e. '**DYSLIPIDEMIA**' we are agree with the opinion of the RMB as NANA as it is a life style disorder.

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 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."*

10. 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.

11. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

12. As such, in view of the decision of Hon'ble Supreme Court in the cases of **Union of India and Ors vs Ram Avtar & ors (supra)** and **Shiv Dass (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 element of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 1362 of 2023** deserves to be partly allowed, hence **partly allowed**. The

impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The first disability of the applicant is held as aggravated by Air Force Service. The second disability of the applicant is held as NANA as has been opined by the RMB. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 22.11.2023. 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 : 13 November, 2024

AKD/-