

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 459 of 2024**Tuesday, this the 12th day of November, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)**
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”

698223R JWO Rama Shankar (Retd.), Flat No. 607, Mangaldeep Apartment, Bithoor Road, Kalyanpur, District – Kanpur, Uttar Pradesh-208017.

..... ApplicantLd. Counsel for the : **Shri Raj Kumar Mishra**, Advocate.
Applicant **Shri Madan Pal Vats**, Advocate
Dr. Abhay Kant Upadhyay, Advocate

Versus

1. The Union of India, through its Secretary, Ministry of Defence, 101-A, South Block, New Delhi-110003.
2. The Chief of Air Staff, Air HQs, Vayu Bhawan, Rafi Marg, New Delhi-110011.
3. Principal Director, Directorate of Air Veterans, Subroto Park, New Delhi-110010.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, New Cantt., Prayagraj-211014.

.....RespondentsLd. Counsel for the : **Dr. Chet Narayan Singh**, Advocate
Respondents. Central Govt. 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 an Order or Direction to the respondents to set aside/quash the impugned RMB proceedings dated 17 Nov 2020 to the extent of not granting the disability pension for diseases Primary Hypertension (Old) (I-10.0, Z09.0) and Type-2 Diabetes Mellitus (E-11).*
- (b) *To Issue an Order or Direction to respondents directing to grant the applicant disability pension for Primary Hypertension (Old) (I-10.0, Z09.0) and Type-2 Diabetes Mellitus (E-11) along with ACL Tear Lt Knee Medial and Lateral Meniscus Tear (S83.2, Z09.0), from the next date of discharge (01.09.2021).*
- (c) *To issue an order or direction to the respondents to round of the disability from 50% to 75% with effect from 01.09.2021.*
- (d) *To issue an order or direction to the respondents to issue revised PPO to the applicant and to pay the arrears w.e.f. 01 Sep 2021 with interest @12% p.a. till realization of payment.*
- (e) *To pass any such further order or orders as deemed fit to this Hon’ble Tribunal to secure the ends of justice.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 20.08.1986 and was discharged from service on 31.08.2021 in Low Medical Category at his own request after rendering 35 years and 12 days of service. The applicant is in receipt of Service Pension Before discharge from service, the Release Medical Board (RMB) held at 19 Wing, Air Force, Guwahati on 17.11.2020 assessed his disabilities (i) **'ACL TEAR LT KNEE MEDIAL AND LATERAL MENISCUS TEAR (S83.2, Z09.0' @20% as attributable to service,** (ii) **'PRIMARY HYPERTENSION (OLD) (I-10.0, Z09.0)' @30%** as neither attributable to nor aggravated (NANA) by service and (iii) **'DIABETES MELLITUS TYPE-2 (E-11)' @20%** as NANA by service, **composite disabilities @50% for life.** The applicant was granted disability element of disability pension @20% rounded off to @50% for life for the first disability. But the applicant's claim for grant of disability element of disability pension for the second and third disabilities was rejected vide letter dated 08.04.2022. The applicant preferred Appeal dated 27.09.2023 but of no avail. 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 applicant's first disability was regarded

as attributable to service @20% for life. Accordingly, the applicant is in receipt of disability element of disability pension @20% rounded off to 50% for the first disability. The second and third diseases of the applicant have been regarded as NANA by service. These diseases of the applicant were also contracted during the service, hence they are also 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 for all the three disabilities and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the first disability of the applicant has been regarded as attributable service, hence, he was granted disability element @20% rounded off to 50% for life. He further contended that second and third disabilities of the applicant @3% and 20% respectively for life have been regarded as NANA by the RMB, hence applicant is not entitled to disability element of disability pension for these disabilities in terms of 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”*. He further submitted that the applicant has personal history of

smoker and occasional drinker vide summary of the case dated 10.08.2016 and has family history of Hypertension and NIDDM in father vide Summary of the case (AFMSF-15) dated 12.12.2013. Further, in the background of overweight, smoking, alcohol consumption, genetic loading and older age, the applicant detected to have Primary Hypertension at the age of 48 years and Diabetes Mellitus Type-II at the age of 53 years and he was placed in composite low medical category A4G4 (Temporary) (T-24) vide AFMSF-15 dated 18.02.2016 and 17.11.2020 respectively. 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 second and third disabilities of the applicant are also attributable to or aggravated by Air Force Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for the second and third disabilities also?

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 second and third disabilities '**PRIMARY HYPERTENSION (OLD) I-10, Z09**' and '**DIABETES MELLITUS, E-11**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in February, 2016 and November, 2020 while posted in Peace locations (Sirsa and Guwahati), therefore, applicant is not entitled to disability element of disability pension for these disabilities. 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 these disabilities are 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. Although, in the Counter Affidavit the respondents have stated that in the background of overweight, smoking, alcohol consumption, genetic loading and older age the aforesaid disabilities have been detected but in the RMB proceeding there no mention about the

cause of aforesaid disabilities with regard to overweight, smoking, alcohol consumption, genetic loading and older age. The applicant was enrolled in Indian Air Force on 20.08.1986 and the second and third disabilities have started after more than 29 and 34 years of Air Force service respectively i.e. in February, 2016 and November, 2020. 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 second and third disabilities of the applicant should also 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 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."

9. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/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.

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 @50% for life to be rounded off to @75% for life may be extended to the applicant from the next date of his discharge.

11. In view of the above, the **Original Application No. 459 of 2024** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the second and third disabilities are set aside. Be it mentioned that the applicant's first disability has already been regarded as attributable to Air Force service and the applicant is getting disability element @20% rounded off to 50% for life. The second and third disabilities i.e. '**PRIMARY HYPERTENSION (OLD) (I-10.0, Z09.0)**' and '**DIABETES MELLITUS TYPE-2 (E-11)**' of the applicant are also held as aggravated by Air Force Service. The applicant is held entitled to get disability element @50% for life which would be rounded off to @75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant

@50% for life which would stand rounded off to @75% for life from the next date of his discharge. The disability element of disability pension paid @50% from the next date of applicant's discharge shall be adjusted from the arrears. 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

12. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 12 November, 2024

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