**Court No. 1**

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

**ORIGINAL APPLICATION No. 843 of 2023**

Friday, this the 06th day of October,2023

**"Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)"**
**"Hon'ble Lt. Gen. Anil Puri, Member (A)"**

No. 629276-F, Warrant Officer (Retd.), Ravi Shankar, House No. 118, Ramkuti, Gaukhera, Chakeri, District – Kanpur Nagar, Uttar Pradedsh, Pin – 208008.

**….. Applicant**

Ld. Counsel for the Applicant : **Shri Keshav Sharma,** Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi -110011.

2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi -110106.

3. The Directorate of Air Veterans, Air Headquarters, subroto Park, New Delhi -110010.

4. The PCDA (Pension), Draupadi Ghat, Allahabad.

5. The JCDA (Air Force), Subroto Park, New Delhi -110010.

**.....Respondents**

Ld. Counsel for the Respondents. : **Ms. Amrita Chakraborty,** Advocate
Central Govt. Standing Counsel
Assisted by **Gp Capt. Amulya Dayal**,
Departmental Representative

## ORDER

**"Per Hon'ble Mr. Justice Ravindra Nath Kakkar, 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) *Quash the impugned order Air HQ/99798/1/62976/01/22/DAV (DP/RMB) dated Sep 2022(say 01.09.2022), Declare the disabilities (i) PRIMARY HYPOPHYROIDISM (ii) PRIMARY HYPERTENSION as aggravated by the Military Service.*

(b) *Grant the disability element of pension to the Applicant @50% w.e.f. 01 Feb 2022 for life with all consequential benefits and*

(c) *To issue/pass any other orders/ direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant and render justice.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 30.06.1984 and discharged on 31.01.2022 (AN) in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at 7 Air Force Hospital, Kanpur on 18.02.2022 assessed his disabilities (i) **PRIMARY HYPOPHYROIDISM (E03&Z09.0)'** @10% (ii) **PRIMARY HYPERTENSION (I10.0)**' @ 30%, **composite disabilities @37% for life** and opined the first disability to be aggravated by military service and second disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 26.08.2022 which was communicated to

the applicant vide letter dated 21.09.2022. The applicant preferred First Appeal dated 06.01.2023 through his Counsel 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. This first disability was regarded as aggravated by Air Force Service. The second disability of the applicant was also contracted during the service, hence it is also attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of 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 although the first disability of the applicant has been regarded as aggravated by Air Force Service but its degree of disablement was 10% which is less than 20% and the second disability of the applicant @ 30% for life have been regarded as NANA by the RMB, hrnvr, as per Regulation 153 of 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. She 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 second disability of the applicant is 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 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 second disability '**PRIMARY HYPERTENSION (I10.0)** is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in October 2021 while posted in Peace location (Kanpur), 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 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 30.06.1984 and the second disability has started after more than 37 years respectively of Air Force service i.e. in October 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 the second disability 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 element 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.*
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> *5. We have heard Learned Counsel for the parties to the lis.*
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> *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.*
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> *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.*
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> 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 (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 @ 37% for life to be rounded off to 50% 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. 843 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. Be it mentioned that the first disability has been regarded as aggravated by Air Force Service by the RMB. The second disability of the applicant is also held as aggravated by Air Force Service. The applicant is entitled to get disability element @37% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @37% for life which would stand rounded off to 50% for life from the next date of his 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

12. No order as to costs.

13. Group Capt. Amulya Dayal, Departmental Representative orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

**(Lt. Gen. Anil Puri)**
**Member (A)**

**(Justice Ravindra Nath Kakkar)**
**Member (J)**

Dated : 06 October 2023

AKD/Ashok/-