

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 58 of 2019

Monday, this the 30th day of September, 2019

Hon'ble Mr. Justice Virender Singh, Chairperson
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 18742-F Group Captain Deepak Bana, VSM (Retd)
Son of Late Shri B S Rana,
R/o Plot No.47 Village Domai Mohalla Vidya Nagar,
Hapur Tehsil, Pargana & District Hapur, PIN 245101 (U.P.)

.....Applicant

Ld. Counsel for :
the Applicant

Shri R Chandra,
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, Government of India,
New Delhi 110011.
2. The Chief of the Air Staff,
Air Headquarters,
New Delhi 110011.
3. Directorate of Air Veterans,
Air Headquarters,
SMC Building, 1st Floor,
Subroto Park,
New Delhi 110010.
4. Joint CDA (Air Force),
Subroto Park,
New Delhi 110010.

.....Respondents

Ld. Counsel for the :
Respondents

Shri Shyam Singh,
Ld. Counsel for the Respondents.

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(i) The Hon’ble Tribunal may be pleased to set aside the rejection order dated 16/11/2016 (Annexure No.A-1) and order dated 27/12/2018 (Annexure No.A-2).*
- “(ii) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 01/11/2016 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*
- “(iii) Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability element @ 50 Percent in terms of Ram Avtar’s case.*
- “(iv) Any other appropriate order or direction which this Hon’ble Tribunal may deem jut and proper in the nature and circumstances of the case including cost of the litigation.”*

2. In brief, the facts necessary for the purpose of this O.A. are that the applicant was commissioned in the Indian Air Force in Aeronautical Branch on 16.02.1987 and was discharged from service on 31.10.2016. The applicant had always been associated directly with the IAF Flying Base, having different aircraft and Aero engine Test beds for testing of fighter aircraft aero engines. As a result, he was regularly and constantly exposed to very high jet engine noise environment. For the first time in December 2012, the applicant reported about the hearing problems. In April 2015 he was placed in Medical Category A4G4 (T-24) for his disability **“SENSORINEURAL HEARING LOSS (B/L) H 90.3”**. Release Medical Board (RMB) of the applicant was held at AF station Jalhalli, Bangalore and RMB assessed the disability **“SENSORINEURAL HEARING LOSS (B/L) OLD H 90.3 Z 09.0”** as attributable to Air Force service, and further his disability was assessed at 15-19% for Life. The applicant was

discharged from service on 31.10.2016 after completion of 29 years, 08 months and 13 days service. He is getting service pension. On 16.11.2016 the applicant was informed about the non eligibility for disability element of pension as the disability was assessed at less than 20%. The applicant's First Appeal has been rejected on 27.12.2018. Hence this O.A. for the aforesaid reliefs.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and has been discharged from service in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He emphasised on the reason given by the Medical Board that the disability has been caused due to prolonged exposure to loud noise (aero engine), hence the aforesaid disability is connected with service and conceded as aggravated by service. He pleaded for grant of disability pension,

4. The respondents have not disputed that the medical authority considered the disability "**SENSORINEURAL HEARING LOSS (B/L) OLD H 90.3 Z 09.0**" as aggravated by service. However, they have stated that in terms of Para 173 of Pension Regulations, the applicant's claim has correctly been rejected by PCDA (P), Allahabad because his disability is less than 20% i.e. 15-19%.

5. We have heard the parties and perused the RMB. The question before us is straight and simple i.e. is the applicant eligible for disability pension with 15-19% of disability?

6. On careful scrutiny of the RMB, we find that the RMB had conceded that the disability has been caused due to prolonged exposure to loud noise (aero engine), hence the disability is connected with service. We however find that though the disability is aggravated by service, the applicant is not eligible for disability element because his disability has been assessed as 15-19% whereas he is eligible for disability element only if his disability percentage is 20% or more. In this situation it is intriguing to understand as

to how the Medical Board decides whether a hearing loss is 1% this side or that side. This kind of assessment appears to be hyper technical and also prone to subjectivity. However, we are of the opinion that the applicant is eligible for disability element through the process of rounding off from 15-19% to 50% as per the law settled on this issue by The Hon'ble Supreme Court of India in the case of *Union of India vs. Ram Avtar & Others*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). In this judgment the Hon'ble Supreme Court has frowned on extending the benefit of rounding off only to persons who have been invalided out of service and denying the same to persons proceeding on normal discharge or to persons proceeding on superannuation. In this case the Hon'ble Supreme Court has dismissed the appeal of the respondents against the order of extending the benefit of rounding off to persons proceeding on normal discharge and superannuation.

7. Thus in view of the above, on the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of *K.J.S. Buttar vs. Union of India and Others*, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, *U.O.I. & Anr vs. K.J.S. Buttar*, and *Union of India vs. Ram Avtar & Others*, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). Hence the applicant is eligible for the benefit of rounding off from 15-19% to 50%.

8. In view of the above the Original Application deserves to be allowed.

9. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability element to the applicant @ 15%-19%, deemed to be 20% for life, which would stand rounded off to 50% for life from the date of discharge i.e. 31.10.2016. 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. In case the respondents fail to give effect to this order within the

stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: September, 2019
PKG/GSR

(Justice Virender Singh)
Chairperson