

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 198 of 2019**Thursday, this the 10th day of December, 2020**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 615308 R Ex WO Chandra Bhan Tripathi, Son of Late Shri S. Tripathi, R/o B-11, Sector – A, Sainik Vihar, Post – Kunraghat, Gorakhpur-08.

..... Applicant

Ld. Counsel for the : **Shri Virat Anand Singh**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Integrated HQ of MoD (Air Force), DHQ PO, New Delhi-110011.
3. Officer Incharge, Directorate of Air Veterans, Subroto Park, New Delhi-110010.

.....**Respondents**Ld. Counsel for the : **Ms. Anju Singh**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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) *To quash the findings of RMB and the Letter dated 08.10.2018 and Initial Rejection.*
- (ii) *To declare and direct respondents to grant Disability Pension to the applicant @20% for life from date of discharge – 16.06.2009, with rounding-off benefit along with arrears with interest of 10% p.a.*
- (iii) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (iv) *Allow this application with cost.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 09.02.1971 and was discharged on 30.04.2010 in Low Medical Category on attaining the age of superannuation after rendering total 39 years and 81 days of service. At the time of retirement from service, the Release Medical Board (RMB) held at HQ SAC (U) AF Trivandrum on 16.06.2009 assessed his disabilities (i) **‘PULMONARY TB (OLD)’** @15-19% opined as attributable to service for life and (ii) **‘TYPE-II DM (OLD)’** @15-19% for life and opined this disability to be neither attributable to nor aggravated (NANA) by service, composite assessment for all

disabilities assessed @30% for life and Net Assessment Qualifying for Disability Pension as @15-19% for life. The applicant's claim for grant of disability pension was rejected by the respondents vide letter dated 09.07.2009. The applicant preferred First Appeal dated 28.05.2018 which too was rejected vide letter dated 08.10.2018. 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 first disease of the applicant was opined by the RMB as attributable to service. The second disease i.e. '**TYPE – II DM (OLD)**' of the applicant was contacted 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 pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents has conceded that first disability of the applicant was attributable to service but it was 15-19% i.e. below 20%, hence, disability pension was not granted to the applicant. He further contended that second

disability i.e. '**TYPE – II DM (OLD)**' of the applicant @ 15-19% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. 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. The questions which needs to be answered are of two fold :-

- (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 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 '**TYPE – II DM (OLD)**' is

neither attributable to nor aggravated (NANA) by service on the ground of onset of second disability on 06.01.2004 while posted in Peace location i.e. New Delhi, therefore, applicant is not entitled to disability pension. We are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressures of rigorous military training and associated stress and strain of Air Force service. The applicant was enrolled in Indian Air Force on 09.02.1971 and the disability has started after more than 32 years of Air Force service i.e. on 06.01.2004. 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. Further, first disability i.e. '**PULMONARY TB (OLD)**' @15-19% for life has already been opined by the RMB as attributable to service and RMB has also opined composite assessment for both disabilities as @30% for life.

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 invalidated 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. 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.”

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off 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.

11. In view of the above, the Original Application No. 198 of 2019 deserves to be allowed, hence **allowed**. The impugned orders dated 13.07.2009 and 08.10.2018, annexed at page Nos. 33 and 34 of Original Application, are set aside. Be it mentioned that the first disability i.e. '**PULMONARY TB (OLD)**' of the applicant has already been opined by the RMB as attributable to service. The

second disability of the applicant i.e. '**TYPE-II DM (OLD)**' is also held as aggravated by Air Force Service. 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 this Original Application. The date of filing this Original Application is 19.11.2018. The respondents are 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 @9% per annum till actual payment.

11. No order as to costs.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 10 December, 2020

AKD/-