

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 551 of 2019**Wednesday, this the 2nd day of December, 2020**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 240759-T Ex. MWO Anirudh Rai, S/o Sri (Late) Prem Narain Saxena, R/o B 108, Sec A, Sainik Vihar, PO : Kurnaghat, District : Gorakhpur-273008 (U).

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi-110106.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Jt. CDA (AF), C/O AFCAO, Subroto Park, New Delhi-110010.
5. PCDA (P) (Air Force), Draupadighat, Allahabad (UP)-211014.

.....**Respondents**Ld. Counsel for the : **Shri Amit Jaiswal**,
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.

- (A) *To quash or set aside the Respondent No. 3 letter dated 31.05.2018 (Annexure A-1 of OA).*
- (B) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.04.2002 (Date of Discharge : 31.03.2002) with all consequential benefits including rounding off benefit from 20% to 50% in terms of Govt of India letter dated 31 Jan 2001 and Judgment passed by Hon’ble Apex Court in case of Ram Avatar Vs Uol & Others.*
- (C) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Corps of Singnals of Indian Air Force on 30.06.1962 and was discharged on 31.03.2002 in Low Medical Category : CEE (T-24) for ID on attaining the age of superannuation after rendering 39 years and 270 days of service. At the time of retirement from service, the Release Medical Board (RMB) held at AF Station Gorakhpur on 30.07.2001 assessed his disability ‘**HYPERTHYROIDISM**’ @20% for five years and opined the disability to be neither attributable to nor aggravated (NANA) by

service. The applicant approached the respondents for grant of disability pension but the same was rejected by the respondents by letter dated 11.09.2003. The applicant preferred First Appeal dated 26.04.2018 which too was rejected vide letter dated 31.05.2018. 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 disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military 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 contended that disability of the applicant @20% for five years 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 disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension, if yes, from which date?

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 disability '**HYPERTHYROIDISM**' is neither attributable to nor aggravated (NANA) by service and not connected with service. During the course of arguments Ld. Counsel for the respondents has submitted that the disease to which applicant suffered is a Constitutional in nature, although there is no such averment either in the Counter Affidavit or in the

RMB proceedings. The applicant was enrolled in Indian Air Force on 30.06.1962 and the disability has started after more than 25 years of Air Force service i.e. in the month of June, 1987. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for five years from the date of his discharge i.e. 31.03.2002.

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. 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 @20% for five years to be rounded off to 50% for five years may be extended to the applicant. However, due to law of limitation, the applicant is not entitled to any arrears on his disability element. He is already in receipt of service element since his discharge.

11. Since the applicant's Release Medical Board was valid for five years from the date of discharge i.e. 31.03.2002, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability pension.

12. In view of the above, the Original Application No. 551 of 2019 deserves to be partly allowed, hence **partly allowed**. The respondents are directed to grant disability element to the applicant @20% for five years which would stand rounded off to 50% for five years. The applicant is held to be entitled to disability pension @20% for five years from the date of discharge of the applicant i.e. 31.03.2002. However, due to law of limitation, the applicant is not entitled to any arrears on his disability element. He is already in

receipt of service element since his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 9% per annum till the date of actual payment.

13. No order as to costs.

(Vice Admiral Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 02 December, 2020

AKD/-