

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1082 of 2023

Wednesday, this the 27th day of September, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex. BC No. 18400 Sqn. Ldr. Mahendra Pal Singh, S/o Late Sheo Singh, R/o Plot No. 12 (H No. 84), Bhabha Nagar, Sanigawan Road, Near Hardutt School, Kanpur (UP).

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Shubham Sharma**, Advocate
Holding brief of
Shri S.N. Singh Gaherwar, Advocate
Shri Ajit Singh Gaherwar, Advocate

Versus

1. Union of India, represented by its Secretary, Ministry of Defence, Pension-Appeal Air HQs Vayu, Bhavan, New Delhi-110106.
2. Chief of the Air Staff, Air Head Quarters (Vayu Bhawan), Rafi Marg, New Delhi-110011.
3. Under Secretary/D (Pension & Policy) Room No. 220A ‘B’ Wing, Sena Bhavan, Ministry of Defence, Government of India, New Delhi-110011.
4. Assistant Chief of Air Staff Account & Air Veteran, SMS Building, Subroto Park, New Delhi-110010.
5. Joint Controller of Defence Accounts Pension C/o AFCAO Building, Subroto Park, New Delhi-110010. .

.....**Respondents**

Ld. Counsel for the Respondents. : **Ms. Appoli Srivastava**, Advocate
Central Govt. 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 :-

- (i) *To pass an order or direction to the respondents to pay arrear of disability pension w.e.f. the date of discontinuation of disability pension w.e.f. 01 Jan 2005 to 25.04.2022 with all the consequential benefit to the applicant.*
- (II) *To issue order or direction directing the respondents to grant the benefit of broad banding in terms of Judgment of Ram Avtar (Board having assessed the percentage of disability 40%, the applicant is entitled to get 50%) with all the consequential benefit to the applicant including exemplary compensation.*
- (III) *To issue any other order or direction considered expedient and in the interest of justice and equality.*
- (IV) *Award cost of petition in favour of the applicant.*

2. Briefly stated, applicant was enrolled as an Airman in Indian Air Force on 13.07.1964, Branch Commissioned on 20.09.1986 and was retired on 31.12.2002 in Low Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at Kanpur on 05.10.2002 assessed his disabilities (i) ‘MENIERE’S DISEASE (OLD)’ @ 15-19% for two years (ii) ‘HYPERTENSION (OLD V-67)’ @30% for two years, composite disabilities @30% for two years but opined the disabilities to be neither attributable to nor

aggravated (NANA) by Air Force service. The applicant's claim for grant of disability pension was rejected vide letter dated 05.05.2004. The applicant preferred representation dated 06.08.2021 which too was rejected vide letter dated 02.09.2021. Aggrieved by the rejection order, earlier the applicant had filed Original Application No. 489 of 2021 before this Tribunal which was partly allowed vide order dated 20.01.2022 and the second disability of the applicant has been held as aggravated by Air Force Service and; the respondents were directed to grant disability element of disability pension to the applicant @30% for two years which would stand rounded off to 50% for two years from the next date of his retirement for the second disability. The respondents were further directed to conduct Re-Survey Medical Board for the applicant to assess his further entitlement of disability element of disability pension. In compliance of the order dated 20.01.2022 of the Tribunal in Original Application No. 489 of 2022 the Re-Assessment Medical Board (RAMB) was held at on 25.04.2022 which assessed the applicant's disability i.e. **'PRIMARY HYPERTENSION' @40% for life**. The RAMB has also assessed the applicant's disability @30% for the intervening period from 01.01.2005 to 25.04.2022. The applicant was granted disability element of disability pension @30% for two years rounded off to @50% for two years from the next date of his retirement i.e. from 01.01.2003 to 31.12.2004. Further, the applicant was also granted disability element of disability pension @40% for life to be rounded

off to @50% for life from 26.04.2022. However, the disability element of disability pension for the intervening period i.e. from 01.01.2005 to 25.04.2022 has not been granted by the respondents. The applicant preferred representations dated 03.08.2022, 22.08.2022, 17.10.2022 and 31.10.2022 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 despite the fact that RAMB assessed the applicant's disability @30% for the intervening period i.e. from 01.01.2005 to 25.04.2022 the respondents have not granted the disability element of disability pension to the applicant. He further contended that grant of disability element of disability pension for the intervening period between the date of expiry of the initial award and recommendations of the Fresh Medical Board policy letter issued by the Ministry of Defence, Government of India dated 10.11.2010. 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 the intervening period and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that in compliance of the order dated 20.01.2022 of this Tribunal in Original Application No. 489 of 2021 the applicant was granted disability element of disability @30% for two years from the

next date of his retirement and RAMB was held and on the basis of RAMB held on 25.04.2022 the applicant was granted disability element of disability pension for life with effect from 26.04.2022 and Corrigendum PPO dated 29.07.2022 was issued accordingly. She further contended that applicant is not entitled for the disability element of disability pension for the intervening period. 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 Re-Assessment Medical Board (RAMB) proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the applicant is entitled for disability element of disability pension for the intervening period?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension for the intervening period?

6. On perusal of RAMB proceedings dated 25.04.2022 we find that at page 3, para 6(b) in column ***“composite Net assessment referable to service with duration (if applicable) (Both in words and figures)”*** the RAMB has categorically assessed as ***“30% (Thirty) FOR THE INTERVENING PERIOD FROM 01 JAN 2005 TO 25 APR 2022”***. We are of the view that the denial of disability

element of disability pension to the applicant for the intervening period was misconceived. Further, since RAMB has assessed the applicant's disability @30% for the intervening period, we are of the considered opinion that the applicant is entitled for the disability element of disability pension for the intervening period.

7. 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 invalided 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."

8. 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.

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)** 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 @30% for intervening period to be rounded off to 50% for intervening period may be extended to the applicant from three preceding years from the date of Re-Assessment Medical Board.

11. In view of the above, the **Original Application No. 1082 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, if any, rejecting the applicant's claim for grant of disability element of disability pension for the intervening period, is set aside. The applicant is entitled to get disability element @30% for the intervening period which would be rounded off to 50% for the intervening period w.e.f. three years preceding the date of Re-

Assessment Medical Board. The respondents are directed to grant disability element to the applicant @30% for the intervening period which would stand rounded off to 50% for the intervening period w.e.f. three years preceding the date of Re-Assessment Medical Board. The date of Re-Assessment Medical Board is 25.04.2022. 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. Gp. Capt. Amulya Dayal/JWO Y.S. Yadav, Departmental Representative for the respondents 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 27 September, 2023

AKD/-