

(Court No. 3)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 552 of 2022**Friday, this the 6th day of January, 2023**"Hon'ble Mr. Justice Anil Kumar, Member (J)"**
Hon'ble Maj Gen Sanjay Singh, Member (A)"Group Captain (TS) Shailendra Kumar Gupta (17646) B) AE(M)
(Retd) S/o Shri Baldeo Prasad Gupta, R/o 6/70 Vipul Khand 6,
Gomti Nagar, District-Lucknow (UP)-226010.

..... Applicant

Ld. Counsel for the : **Shri Vir Raghav Chaubey**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, MoD (IAF), South Block, New Delhi-110066.
2. Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi - 110011.
3. Director of Air Veterans [Director AV1(B)], Air HQ, SMC Building (1st Floor) Subroto Park, New Delhi-110010.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, Uttar Pradesh -211014.

.....Respondents

Ld. Counsel for the : **Shri JN Mishra**, Advocate
Respondents. Central Govt. Counsel**ORDER(Oral)**

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 and set aside the Respondent No 3 letter No Air HQ/99797/4081/Dis/O/DAV-1(B) dated 27 Nov 2018 and 09 Jun 2022. (**Annexure A & A-2 of instant OA & Impugned Order**).*
- (b) *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the date of his retirement from service (01.03.2018) and to pay the arrears along with suitable rate interest as deem fit by this Tribunal.*
- (c) *to grant the benefit of rounding of the disability element from 70% to 75% and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.*
- (d) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was commissioned in the Indian Air Force on 29.08.1984 and discharged on 28.02.2018 on attaining the age of superannuation. At the time of discharge from service, the Release Medical Board (RMB) held at Air Force Station Kanpur on 23.08.2017 assessed his disabilities (i) '**PRIMARY HYPERTENSION (Old)**' @ 30% for life neither attributable to nor aggravated by military service (NANA), (ii) '**TYPE -II DIABETES MELLITUS (Old)**' @ 20% for life neither attributable to nor aggravated by military service (NANA), (iii) '**PIVD C5-C6 (Old)**' @ 20% (11-14% on refusal of surgery) for life aggravated by military service, (iv) '**DEGENERATIVE DISC DISEASE L4/L5/S1**' (Old) @ 20% for life neither attributable to nor aggravated by military service (NANA), (v) '**NORMOCYTIC NORMOCHROMIC ANEMIA**' (Fresh) @ 15-19% for life neither attributable to nor aggravated by military service (NANA) and (vi) '**DYSLIPIDEMIA (Fresh)**' @ 1-5% for life neither attributable to

nor aggravated by military service (NANA) and composite disabilities for all disabilities were assessed @ 70% for life. The applicant's claim for grant of disability element of pension was rejected vide letters dated 27.11.2018 and 09.06.2022. It is in this perspective that the applicant has preferred the present Original Application for grant of disability element of pension.

3. Learned Counsel for the applicant pleaded that at the time of commission, the applicant was found mentally and physically fit for service in the Air Force and there is no note in his service documents that he was suffering from any disease/disability at the time of enrolment in Air Force. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Air Force Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents submitted that since disabilities (i), (ii), (iv), (v) and (vi) of the applicant have been regarded as NANA and disability (iii) is less than 20%, he is not entitled to disability element of pension. He further submitted that claim for grant of disability element of pension was rejected vide order dated 27.11.2018. It was further submitted that while rejecting claim for grant of disability element of pension, the applicant was advised to prefer First Appeal within six months but the record shows that till 02.06.2022 no appeal

was preferred by the applicant. He pleaded for dismissal of O.A. on the ground that the applicant is not entitled to disability element of pension in terms of Regulation 153 of Pension Regulations for the Air Force, 1961 (Part-I).

5. Heard Shri Ravi Kumar Yadav, learned counsel for the applicant and Shri JN Mishra, learned counsel for the respondents and perused the record.

6. The questions with regard to grant of disability element of pension are of two fold:-

(a) Whether the disabilities (i), (ii), (iv), (v) and (vi) of the applicant are 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?

7. 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)."

8. 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 (i) has originated in peace area, disability (ii) is a life style disease, disability (iii) is less than 20% as the applicant has refused to undergo surgery, disability (iv) is age related disease, disability (v) is not due to stress and stress of military service and being below 20% and disability (vi) is less than 20% but we find that the composite disability for all the disabilities has been assessed @ 70%, therefore he seems to be entitled to get 70% disability element of pension. The respondents have denied disability element of pension on the ground that the disabilities are NANA. However, considering the facts and circumstances of the case, we are of the opinion that reasoning given by Release Medical Board and respondents for denying disability element of 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 duties and associated stress and strain of Air Force service. The applicant was enrolled in Indian Air Force on 29.08.1984 and the disabilities were started after more than 25 years of Air Force service i.e. in Jul 2015, Mar 2016, Dec 2009 and Aug 2017 respectively. 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** (supra), and disabilities (i), (ii), (iv), (v) and (vi) of the applicant should be considered as aggravated by Air Force service.

9. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the 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."

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 & Ors***, we are of the considered view that benefit of rounding off of disability element of pension @ 70% for life to be rounded off to 75% 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. 552 of 2022** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of pension, is set aside. All the disabilities of the applicant are held as aggravated by Air Force Service. The applicant is entitled to get disability element @ 70% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @ 70% for life which would stand rounded off to 75% for life from the next date of his discharge

i.e. 01.03.2018. However, due to law of limitation as held by the Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, applicant is eligible for grant of disability element of pension w.e.f. three preceding years from the date of filing of this O.A. which was filed on 11.07.2022. 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% p.a.

12. No order as to costs.

13. Miscellaneous applications(s), pending if any, stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 06 January, 2023

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