

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 115 of 2020**

Tuesday, this the 06th day of April, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 261216 F HFO Kamla Mishra (Retired), S/o Late Shri Chhangur Mishra, R/o : H. No. 259 B, Sector – B, Sainik Vihar, PO – Kunaraghat, District Gorakhpur (UP)-273008.

..... 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, AFRO Building, Subroto Park, New Delhi-110010.
4. PCDA (P) (Air Force), Draupadighat, Allahabad (UP)-211014.

.....**Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,
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 Respondents letters dated 12.12.2017 initial rejection of disability claim dated 27.01.2005 and finding of the RMB date 25.03.2004 wherein Disability has been adjudged NANA.*
- (B) To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01.10.2008 (Date of discharge : 30.09.2008) with all consequential benefits including rounding off benefit from 30% 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 may awarded in favour of the applicant.*
- (D) Allow this application with cost.”*

2. Briefly stated, applicant was enrolled in Indian Air Force on 10.01.1967 and was discharged on 31.01.2005 in Low Medical Category BEE (Permanent) on attaining the age of superannuation after rendering total 38 years and 22 days of service. At the time of retirement from service, the Release Medical Board (RMB) held at 17 Wing, AF on 25.03.2004 assessed his disabilities (i) ‘**NIDDM**’ @ 15-19% for five years and (ii) ‘**PRIMARY HYPERTENSION**’ @30% for five years, composite disabilities @30% for five years but opined the disabilities to be neither attributable to nor aggravated (NANA) by Air Force service. The initial claim for grant of disability pension was rejected by the respondents vide letter dated 27.01.2006 which was communicated to the applicant vide letter dated 14.02.2006. The applicant preferred First Appeal which too

was rejected vide letter dated 12.12.2017. It is in this perspective that the applicant has preferred the present O.A.

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 Indian 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 diseases of the applicant were contacted 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 pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, 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 composite disabilities of the applicant has been regarded as 30% for five years by RMB. However, since the disabilities were opined by RMB to be neither attributable to nor aggravated by Air Force service his claim for grant of disability pension was not granted. He pleaded for dismissal of the O.A.

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 and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disabilities of applicant are attributable to or aggravated by Air Force service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his 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 IMB has denied attributability to the applicant only by endorsing that the disabilities '**NIDDM**' and '**PRIMARY HYPERTENSION**' to be neither attributable to nor aggravated (NANA) by Air Force service, Constitutional in origin and not connected with service. The disabilities have been firstly detected in January 1983 and November 1981 whereas the applicant was enrolled on 10.01.1967 i.e. after about fourteen years of Air Force service. We are therefore of the considered opinion that the reasons given in RMB for declaring diseases 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 disabilities of the applicant should be

considered as aggravated by Air Force service, as such the applicant is entitled for the disability pension for five years from the date of his discharge.

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. 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 (supra)***, we are of the considered view that benefit of rounding off of disability pension @ 30% for five years to be rounded off to 50% for five years may be extended to the applicant from the date of his discharge.

10. Since the applicant's RMB was valid for five years w.e.f. 31.01.2005, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 115 of 2020** deserves to be allowed, hence, **allowed**. The impugned orders dated 27.01.2005 and 12.12.2017, annexed as Annexure No. A-1 of the Original Application, are set aside. The disabilities of the applicant are held as aggravated by Air Force service. The applicant is entitled to get disability element @30% for five years

which would be rounded off to 50% from the date of his discharge. The respondents are directed to grant disability element to the applicant @30% for five years which would stand rounded off to 50% for five years from the date of discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further 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 @ 8% per annum till the date of actual payment.

12. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 06 April, 2021

AKD/-