

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No 1114 of 2022

Tuesday, this the 11th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

669877 MWO Ashok Kumar Srivastava (Retd), S/o Late Jagdish Lal Srivastava R/o H. No. 3661, Behind Shiv Mandir, Lachipur, Rajendra Nagtar East, Gorakhnath, Gorakhpur, Uttar Pradesh - 273 015.

..... Applicant

Ld. Counsel for the Applicant: **Shri Raj Kumar Mishra, Advocate**
Ms. Upasna Mishra, Advocate
Shri Kapil sharma, Advocate

Versus

1. The Union of India Through Principal Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi - 110011
2. The Chief of the Air Staff Air HQs, Vayu Bhawan, Rafi Marg, New Delhi - 110106
3. The Principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi – 110010.
4. The Joint Controller Defence Accounts (Air Force), 2nd Floor, AFCAO, Building, Subroto Park, New Delhi - 110010

..... Respondents

Ld. Counsel for the Respondents : **Mrs. Amrita Chakraborty,**
Central Govt Counsel.

ORDER (ORAL)

“Per Hon’ble Mr. Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) To issue / pass an order or direction of appropriate nature to the respondents to set aside / quash the impugned order dated 30.07.2021 and RMB dated 28.08.2020.

(b) To issue / pass an order or direction of appropriate nature to the respondents directing to grant disability pension from the date next to the date of discharge i.e., 01.08.2019 and interest thereon at the rate of 18% per annum.

(c) Issue / pass an order or direction to the respondents to round off the disability pension from 60% for life to 75% for life in terms of benefit of broad-banding as held in Ram Avtar’s case.

(d) Issue / pass any other order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.

(e) allow this application with exemplary costs.”

2. Counter affidavit filed by the respondents is taken on record.

3. Briefly stated, applicant was enrolled in the Indian Air Force on 24.10.1981 and discharged on 31.07.2019 (AN) in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at 17 Wing, Air Force on 28.08.2020 assessed his disabilities (i) **“PRIMARY HYPERTENSION (I-10.0, Z-09.0)’ @30% for life** (ii) **‘DYSLIPIDEMIA –OLD (E-78.9, Z-09.0)’ @5% for life** and (iii) **DIABETES MELLITUS TYPE-II-OLD (E11.0, Z09.0)”** and ‘ (iv) **MODERATE NON-PROLIFERATIVE DIABETIC RETINOPATHY BOTH EYE AND CLINICALLY SIGNIFICANT MACULAR EDEMA RT EYE @40% for life composite disabilities @60% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant’s claim for grant of disability pension was rejected vide letter dated 30.07.2021. Applicant preferred First Appeal dated 18.01.2022 which has not yet been responded by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

4. 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 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 disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 75%.

5. On the other hand, Ld. Counsel for the respondents contended that applicant was discharged from service on completion of terms of engagement after rendering 37 years and 09 months and 07 days of service. The (ii) disability i.e. Dyslipidemia assessed @ 5% is a metabolic disease with inherited enzyme deficiency and excessive intake of saturated fats with no casual connection to service. Hence this disability cannot be treated as attributable to military service. Further, as per Regulation 153 of Pension Regulations for the IAF, 1961 (Part – I) the applicant is not entitled to disability element of disability pension as his disabilities are assessed as NANA. He pleaded for dismissal of the Original Application.

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

- (a) Whether the disabilities 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 assessed (ii) disability i.e. **Dyslipidemia- Oldas** 5%. The cause of this disease is due to metabolic inherited enzyme deficiency and excessive intake of saturated fat, hence it cannot be considered as attributable to military service. RMB has denied attributability to the applicant only by endorsing that the disabilities **DIABETES MELLITUS TYPE-II-OLD (E11.0, Z09.0)**, **MODERATE NON-PROLIFERATIVE DIABETIC RETINOPATHY BOTH EYE AND CLINICALLY SIGNIFICANT MACULAR EDEMA RT EYE** and **'PRIMARY HYPERTENSION (I-10.0, Z-09.0)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities in March 2018 while posted in Peace location

(Gorakhpur), therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, 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 pressure of rigorous Air Force training and associated stress and strain of Air Force service. The applicant was enrolled in Indian Air Force on 24.10.1981 and the disabilities have been started after more than 37 years of Air Force service i.e. in March 2018. 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 disability 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 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, we are of the considered view that (ii) disability i.e. **'Dyslipidemia – Old'** cannot be considered as attributable to Air Force Service as reason of this disease is due to metabolic inherited enzyme deficiency and excessive intake of saturated fat. Now Composite assessment for the remaining diseases will be $30+26.6=56.6\%$ and after rounding of, the applicant shall be entitled disability element @ 75% for life from the next date of his discharge.

11. In view of the above, the **Original Application No. 1114 of 2022** deserves to be partly allowed, hence partly **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The composite disabilities **'PRIMARY HYPERTENSION (I-10.0, Z-09.0), DIABETES MELLITUS TYPE-II-OLD (E11.0, Z09.0) and MODERATE NON-PROLIFERATIVE DIABETIC RETINOPATHY BOTH EYE AND CLINICALLY SIGNIFICANT MACULAR EDEMA RT EYE** are held as aggravated by Air Force Service. Now Composite assessment for the remaining diseases will be 56.6% and after rounding of, the applicant shall be entitled disability element @ 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant for both diseases @ 56.6% which shall be rounded off to @75% for life from the next date of his discharge. 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 11th April, 2023
RKM/-