

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 584 of 2023

Monday, this the 22nd day of April, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

900468-N Sgt. Birendra Kmar Patel (Retd.), Residing at H. No. 1/312, Ruchi Khand-1, sharda Nagar, Lucknow (UP)-226002.

..... Applicant

Ld. Counsel for the Applicant : **Shri Mahendra Kumar Singh**, Advocate

Versus

1. Union of India, through Secretary, MoD (IAF), South Block, New Delhi-06.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Dte of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Jt. CDA (Air Force), Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Deepti Prasad Bajpai**, Advocate
Central Govt. Standing Counsel

ORDER**“Per Hon’ble Mr. Justice Anil Kumar, 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 and set aside the Respondent No. 3 impugned letter Air HQ/99798/1/900468/12/21/DAV (DP/RMB) dated 18 Feb 2022 (Annexure A-1 of OA) wherein applicant’s initial claim for grant of disability element of disability pension was rejected as ineligible being of NANA case.*
- B. *to issue/pass an order or directions of appropriate nature to the respondents to consider the Applicant’s disability as attributable and aggravated due to Air Force Service and accordingly grant disability element of disability pension to the applicant @20% for life from the date next to date of his discharge from service i.e. with effect from 01 Jan 22 and pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- C. *to grant the benefit of rounding off the disability element of disability pension @20% to @50% from the date next to date of his discharge from service (01.01.2022) in terms of Govt of India letter dated 31 Jan 2001 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 enrolled in the Indian Air Force on 19.12.2001 and discharged on 31.12.2021 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 HQ Maintenance Command (Unit), Nagpur on 20.04.2021 assessed his disability '**VARICOSE VEIN (B/L) LOWER LIMB (ICD NO. I-83, Z09.0)**' @20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. In the column of '*Composite assessment for all disabilities with duration*' the RMB has endorsed that "*05% (Five percent) (For life) (75% reduced due to unwillingness for surgery)*". The applicant's claim for grant of disability pension was rejected vide letter dated 18.02.2022. The applicant preferred First Appeal 28.07.2022 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 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 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 element of 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 life has been regarded as NANA by the RMB, hence as per Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) which provides that *“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over”* the applicant is not entitled to disability element of disability pension. She further submitted that the applicant was found to be overweight since 08.04.2014 and in the background of overweight the applicant was initially detected to have the aforesaid disability. Further, the applicant was offered surgery, however, he was unwilling to undergo at that moment. Therefore, the applicant was placed in permanent medical classification A4G4 (P) vide AFMSF-15 dated 02.02.2016. 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 Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Air Force Service?

- (b) Whether the RMB can reduce the degree of disablement on the ground of unwilling for surgical treatment?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

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 '**VARICOSE VEIN (B/L) LOWER LIMB (ICD NO. I-83, Z09.0)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in May, 2015 while posted in Peace location (Delhi/AFRO) and the applicant is Clerk GD by trade, 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 element

of disability pension to applicant is cryptic, 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 19.12.2001 and the disability has started after more than 13 years of Air Force service i.e. in May, 2015. 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.

8. In the instant case the disability has been assessed @20% for life by the RMB. At page 8 of the RMB proceedings, in the columns of "*Composite assessment for all disabilities with duration*" the RMB endorsed that that "*05% (Five percent) (For life) (75% reduced due to unwillingness for surgery)*". It means it was done due to unwillingness for surgery given by the applicant. Further, in the instant case vide para 5(f) of Part V in RMB proceedings, it had been specifically stated that the probable percentage to which the disablement could be reduced by operation was 75%. As such, there is no possibility of 100% to cure the disability of the applicant by surgical treatment. Therefore, we are of the opinion that the degree of disablement cannot be reduced by the RMB on the ground of unwilling for surgical treatment by the applicant.

Accordingly, we hold that the assessment degree of disability is @20% for life.

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 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."

10. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

11. 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)*** as well as Government of India, Ministry of Defence letter No.17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @20% for life to be rounded off to 50% for life

may be extended to the applicant from the next date of his discharge.

12. In view of the above, the **Original Application No. 584 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held @20% for life as aggravated by Air Force Service. The applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% 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.

13. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 22 April, 2024

AKD/-