

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 382 of 2023**Friday, this the 28th day of July, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

743885-T, Sgt. Amit Kumar (Retd.), S/o Shri Arjun Prasad, Residing at House No. 84, Friends Avenue Colony, Near Chunnur Khera Tiraha, Parsadi Khera, Sadrauna, Lucknow (U.P)-226008.

..... 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 Air Staff, Air Hqrs, Vayu Bhawan, New Delhi -110011.
3. Dte. of Air Veterans, Air HQrs, Subroto Park, New Delhi - 110010.
4. Jt. CDA (Air Force), Subroto Park, New Delhi -110010.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Prerna Singh**, Advocate
Central Govt. Counsel

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 :-

- (A) *To quash and set aside the Respondent No. 3 impugned letter Air HQ/00798/1/43885/12/21/DAV (DP/RMB) dated*

11.03.2022 (Annexure A-1 of OA) wherein applicants' 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 disabilities as attributable and aggravated due to Air Force Service and according to grant disability element of disability pension to the applicant @50% for life from the day next to date of his discharge from service i.e. with effect from 01 Jan 22 and pay and arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.
- (C) To grant the benefit of rounding of the disability element of disability pension from 50% to 75% from the next 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 SMC 32 Wing Air Force on 15.02.2021 assessed his disabilities (i) '**PRIMARY HYPERTENSION (OLD) ICD No. I10 Z.09.0**' @ 30% as neither attributable to nor aggravated (NANA) by service (ii) '**DYSLIPIEMIA (OLD) ICD No.E.78.0, Z09.0**'@5% as NANA by service (iii) '**BILATERAL NOISE INDUCED SNHL (OLD) ICD No. H90.3, Z09.0**' @15% as attributable to service, composite disabilities 40%

for life. The applicant's claim for grant of disability pension was rejected vide letter dated 11.03.2022. The applicant preferred First Appeal dated 22.08.2022 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 first and second diseases of the applicant were also contracted during the service, hence they are also attributable to and aggravated by Air Force Service. Learned Counsel for the applicant submitted that the RMB has assessed the applicant's third disability as **attributable to** service @15% for life but the third disease with which applicant suffers is a hearing loss and per table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) the degree of disablement in case of hearing loss cannot be assessed less than 20%. 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%.

4. On the other hand, Ld. Counsel for the respondents contended that although the third disability has been regarded as attributable to service but it was assessed @15% which is less than 20 and the first and second disabilities of the applicant @30% and @5% respectively

have been regarded as NANA by the RMB, hence as per Regulation 153 of Pension Regulations for the Indian Air Force, 1961 (Part – I) the applicant is not entitled to disability element of disability pension. 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 of three folds:-

- (a) Whether the first and second disabilities of the applicant are also attributable to or aggravated by Air Force Service?
- (b) Whether the assessment of 15% of third disability in the case of hearing loss is in accordance with extant rules/guidelines?
- (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 first disability '**PRIMARY HYPERTENSION (OLD) ICD No. I10 Z.09.0**' is neither attributable to nor aggravated (NANA) by service on

the ground of onset of disabilities in Feb 2011 while posted in Peace location (Barnala), therefore, applicant is not entitled to disability element of 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 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 19.12.2001 and the first disability has started after more than 10 years of Air Force service i.e. in Feb 2011. 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 first disability of the applicant should be considered as aggravated by Air Force service.

8. However, with regard to second disability i.e. '**DYSLIPIDEAEMIA (OLD) E 78.0, Z09.0**' we are agree with the opinion of the RMB as NANA as it is a life style disorder.

9. On careful scrutiny of the documents, we find that the RMB has assessed the applicant's third disability @15% for life as attributable to service. In this regard when we see the said provisions, we observe that in the table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) it is clear that degree of disablement in case of hearing loss cannot be less than 20%.

Therefore, we are of the view that applicant's third disability should be assessed @20% in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

10. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

11. In view of above, since in the instant case first and third disabilities have entirely different functional effects, hence the composite assessment is to be the arithmetical sum of their separate assessment. Accordingly, we hold that the composite assessment of first and third disabilities is @50% for life.

12. 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.”

13. 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.

14. 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*** 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 pension @ 50% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his discharge.

15. In view of the above, the **Original Application No. 382 of 2023** 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 first disability of the applicant is held as aggravated by Air Force Service. The third disability of the applicant is held @20% for life. Be it mentioned that the third disability of the applicant has already been regarded as attributable to service by the RMB. The applicant is entitled to get disability element @50% 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 @50% for life which would stand 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

16. No order as to costs.

17. Ld. Counsel 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 : 28 July, 2023

AKD/Ashok/-