

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 570 of 2021**

Wednesday, this the 04<sup>th</sup> day of May, 2022

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

Ex JWO Pradeep Kumar Bajpai, (No 666818-K) s/o Krishan Chandra Bajpai,  
Resident of plot No-71, Golden Wing Avenue, Rudahi, Bakshi Ka Talab,  
Lucknow (UP).

..... Applicant

Learned counsel for the : **Shri Suyash Bajpai**, Advocate  
Applicant **Shri Alok Srivastava**, Advocate

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. Chief of Air Force Staff, Indian Air Force, Air Force Headquarters, New Delhi.
3. Air Headquarters, Directorate of Air Veterans, Subroto Park, New Delhi.
4. Directorate of Air Veterans, Air Headquarters, AFRO Building, Subroto Park, New Delhi.

.....Respondents

Learned counsel for the: **Shri Devesh Kumar Mishra**, Advocate  
Respondents. **Central Govt Counsel**

## ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Hon'ble Tribunal may kindly be pleased to set aside the order dated 10.10.2018 and 17.04.2020 contained as Annexure No 1 & 4 to the original application.*
- (b) *Hon'ble Tribunal may be pleased to direct the respondents to grant disability element with effect from 30.09.2018 with interest at the rate of 18% per annum.*
- (c) *Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 75% in terms of Ram Avtar, Dharamvir Singh case and a recent judgment passed by this Hon'ble Tribunal in Original Application No 49 of 2021 decided on 10<sup>th</sup> August, 2021 ex Ris Arun Shankar Shukl's case.*
- (d) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.*
- (e) *Award the cost of the original application.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 12.12.1979 and was discharged from service on 30.09.2018 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 38 Wing Air Force on 22.02.2018 assessed his disability 'Chronic Myeloid Leukemia (Chronic Phase (C-92.0)' @ 50% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 10.10.2018. The applicant preferred First Appeal which too was rejected vide letter dated 17.04.2020. Thereafter, he preferred second appeal which seems to have not been decided as yet. 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/disability at the time of enrolment in the Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by the 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 also pleaded for rounding off of disability element of pension @ 75% for life.

4. On the other hand, despite giving sufficient time the respondents have neither filed counter affidavit nor have they decided the statutory appeal of the applicant which was preferred in 2020. On 23.03.2022 respondents were granted three weeks time to file counter affidavit and decide the statutory appeal also; but they have failed to do so. It was made clear on that date that if the counter affidavit is not filed within the stipulated period, it will be presumed that respondents knowingly do not want to decide the appeal nor they want the O.A. to be decided and in that case the O.A. shall be decided based on pleadings on record. During the course of hearing learned counsel for the respondents contended that since disability of the applicant @ 50% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

5. We have heard learned counsel for the applicant as also learned 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 disability of the applicant is attributable to or aggravated by Air Force Service?

(b) Whether the applicant is entitled for the benefit of rounding off the 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

'Chronic Myeloid Leukemia' is neither attributable to nor aggravated (NANA) by Air Force service on the ground of onset of disability while posted in modified field area, 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 12.12.1979 and the disability has started after more than 35 years of Air Force service i.e. in the year 2014. 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. 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 10<sup>th</sup> 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 element of 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."*

9. In view of the above, the Original Application No. 570 of 2021 deserves to be allowed, hence **allowed**. The impugned order dated 10.10.2018 and 17.04.2020, annexed as Annexure No. 1 and 4 with Original Application, are set aside. The disability of the applicant is held as aggravated by Air Force Service. 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 i.e. 01.10.2018. 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

10. No order as to costs.

11. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 04.05.2022

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