

Court No. 1(E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 28 of 2022**

Tuesday, this the 29th day of November, 2022

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

17003-G Gp. Capt. Suvashis Chakraborty (Retd), S/o Late Shri Subodh Kumar Chakraborty, R/o Flat No. 622, Jalvayu Residency, 337, Motilal Gupta Raod, PO - Barisha, Kolkata, Pin-700008.

..... Applicant

Ld. Counsel for the Applicant : **Shri Abhishek R. Shukla**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. The Chief of the Air Staff, through AIR HQ, Directorate of Air Veterans, SMC Building (1st Floor), Subroto Park, Delhi Cantt. New Delhi-110010.
3. Joint Controller of Defence Accounts, Subroto Park, Delhi Cantt., New Delhi-110010.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Kaushik Chatterjee**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 28 of 2022, for the following reliefs:-

- (a) *Call for the entire records including RMB and all Medical proceedings records based on which the applicant’s disability has been declared neither attributable n or aggravated by military service and quash all such orders including impugned letter dated 06.12.2017 not considering his disability attributable to Air Service and rejecting his claim of disability pension.*
- (b) *Direct the Respondents to grant him grant disability pension with effect from the date of retirement i.e. from 31.10.2017 @40% composite disability for noth the invaliding diseases i.e. Primary Hypertension and Type –II Diabetes Mellitus and further broadband it to 50% in the light of the judgement passed by the Hon’ble Supreme in C.A.418 of 2012.*
- (c) *Direct the Respondents to pay disability pension to the Applicant as assessed by the RMB wef*

31.10.2017 along with arrears with interest @18% per annum.

(d) Issue such other order / direction as may be deemed appropriate in the facts and circumstances of the case.

2. Briefly stated, applicant was commissioned in the Indian Air Force on 28.12.1982 and retired on 31.10.2017 in Low Medical Category on attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at IAM, IAF on 07.04.2017 assessed his disabilities (i) **'PRIMARY HYPERTENSION (OLD) I 10.0, Z09'** @ 30% for life and (ii) **'TYPE-II DIABETES MELLITUS (OLD) E-11,Z09.0 @20% for life composite disabilities @40% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 06.12.2017. The applicant preferred First Appeal which too was rejected vide letter dated 19.09.2018. It is in this perspective that the applicant has preferred the present Transferred Application.

3. Learned Counsel for the applicant pleaded that at the time of commission, 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 diseases at the time of commission 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 pension in similar cases, as such the applicant be granted 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 @ 40% for life has been regarded as NANA by the RMB, 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. He pleaded for dismissal of the Transferred 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 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?

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 '**PRIMARY HYPERTENSION (OLD) I 10.0, Z09**' and '**TYPE-II DIABETES MELLITUS (OLD) E-11, Z09.0**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities in Jan 2004 and Jan 2006 while posted in Peace locations (Nashik and New Delhi) therefore, applicant is not entitled to 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 commissioned in Indian Air Force on

28.12.1982 and the disabilities have been started after more than 21 and 23 years of Air Force service respectively i.e. in Jan 2004 and Jan 2006. 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 both the disabilities 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 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.”

9. 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.

10. 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(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @40% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

11. In view of the above, the **Transferred Application No. 28 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Air Force Service. The applicant is entitled to get disability element of disability pension @40% for life which would be rounded off to 50% for life from the from the next date of his retirement. The respondents are directed to grant disability element to the applicant @40% for life which would stand rounded off to 50% for life from the next date of his retirement. 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 29 November, 2022

AKD/-