

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 356/2019 with MA 898/2019**

**Ex Sgt Pravez Khan**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. Ved Prakash, Advocate

**For Respondents** : Mr. Avdhesh Kumar Singh, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 898/2019**

MA 898/2019 filed on behalf of the applicant seeking condonation of 146 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh (2008) 8 SCC 648** and in **Ex Sep Chain Singh Thr LR. Dhaneshwari Devi Vs Union of India & Ors** in Civil Appeal No. 022965/2017 arising out of Civil Appeal Diary No. 30073/2017 and the reasons mentioned, the MA 898/2019 is allowed and the

delay of 146 days in filing the OA is thus condoned. The MA is disposed of accordingly.

**O.A. No. 356/2019**

2. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (a) ***Quash impugned letter HQ /99798 /1 / 795019/DAV/DP/CC dated 15.02.2019 and Impugned letter No Air HQ /99798 /2/795019/DAV(DP/RMB) dated 20.04.2018.***
- (b) ***Direct respondents to grant disability element of pension to the applicant duly rounded off to 75% w.e.f his date of discharge.***
- (c) ***Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.***
- (d) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.***

**BRIEF FACTS**

3. The applicant was enrolled in the Indian Air Force on 07.05.1998 and was discharged from service on 10.04.2018,

after completing a period of more than 20 years of regular service. The Release Medical Board dated 31.07.2017 held that the applicant was fit to be discharged from service in composite low medical category A4G2(P) for the disabilities of (a) Primary Hypertension (Old) @ 30% for life, (b) Dyslipidemia @ 1-5% for life (d) Hypothyroidism (Old) 11-14% for life and (c) Recurrent Depressive Disorder @ 40% for life in the low medical category A4Gp which were compositely assessed @ 70% for life while the net qualifying element for disability was recorded as NIL for life on account of all the disabilities being treated as neither attributable to nor aggravated by military service.

4. The claim for grant of disability element of pension was preferred by the applicant and the same was rejected by the Air HQ vide letter no AIR HQ/99798/2/795019/DAV(DP/RMB) dated 20.04.2018. Thereafter the applicant sent a legal notice dated 06.02.2019 for grant of disability element of pension and the same was rejected vide HQ letter no. Air/HQ/99798/1/795019/DAV/DP/CC dated 15.02.2019. Aggrieved by the decision of the respondents, the applicant

has filed the present OA. In the interest of justice thus, in terms of Section 21(2) of the AFT Act 2007, it is considered appropriate to take up the present OA for consideration.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disability of Hypothyroidism (Old) @ 11-14% for life only and the prayer made for grant of disability element of pension in relation to disabilities of (a) Primary Hypertension, (b) Dyslipidemia and (c) Recurrent Depressive Disorder are not pressed.

6. The learned counsel for the applicant submitted that the applicant was subjected to a thorough medical examination conducted by the medical board at the time of his entry into the military service and was found medically fit to join the service in Indian Air Force and was posted to various Air Force units in varied geographical conditions and, therefore, any medical disability contracted by him during the course of service should be treated as attributable to and aggravated by the stress and strains of service.

7. The learned counsel for the applicant submitted that the applicant was posted in peace stations at the time of diagnosis of his disability of Hypothyroidism (Old) and due to this reason his disability was held neither attributable to nor aggravated by military service. It is further submitted by the learned counsel for the applicant that the said disease is an immunologically mediated disease and its onset can be aggravated by the service conditions such as worry, stress and strain, shock which can precipitate the toxic symptoms. Hypothyroidism is a disease which is related to stress and strain of service. Hence the said disability of the applicant is connected with service and should have been conceded attributable to/aggravated by military service.

8. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgments of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, CA No. 5840/2011 in the case of **Hon. Flt. Lt. P.S. Rohilla vs. Union of India, UOI & Ors Vs. Angad Singh Titaria**, 2015(5) JT 478, 2015 (2) SCALE 640. 2015 (5) SLR 403, AIR

2015 SC 1898, CA No 2904 of 2011 in case of **Union of India & Ors. Vs Rajbir Singh** dated 13 February, 2015.

9. Reliance was also placed on behalf of the applicant on order of this Tribunal in OA No. 168/2022 in case **Ex Hav Raghubir Singh Vs UOI & Ors.** dated 18.10.2023, and OA No. 1572/2019 in case of **Ex Nk Mukesh Yadav vs Uoi & Ors** dated 22.08.2023, wherein similarly situated personnel were given relief.

10. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Release Medical Board, being Expert Body, after thorough examination of the applicant, found the disability as “Neither Attributable to Nor Aggravated by Military Service” on the ground that the said disability of the applicant is not connected with service. The learned counsel further submitted that the applicant’s disability is assessed at less than 20% does not fulfill the necessary twin conditions for being eligible to get disability pension in terms of Rule 153 of Pension Regulations for IAF, 1961 (Part-1). Thus the applicant

is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

### **ANALYSIS**

11. We have heard learned counsel for the parties and have also perused the record produced before us.

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we find that the applicant has suffered from disability of Hypothyroidism (Old) @ 11-14% for life. The applicant was diagnosed with the disability 'Hypothyroidism (Old)' which occurred in December, 2014. Since, Hypothyroidism (Old) relates to an underactive thyroid, a condition in which the thyroid gland does not produce enough of certain crucial hormones, therefore, the disease can happen at any stage of life and normally tend to happen more towards middle age. The disease is very common and normally relates to lifestyle disorder unless any specific grounds are given.

13. As per Para 38 of GMO (MP) 2008, for Hypothyroidism (Old) attributability can be conceded following therapeutic trials. There is nothing in the medical records of the applicant

that suggests that the applicant was under any therapeutic trials and hence attributability of the disability cannot be conceded in the instant case. The GMO (MP) 2008, is silent about the aggravation for Hypothyroidism. Aggravation is only conceded due to stress and strain if the person suffers from Grave's disease. From the open medical literature, it is discerned that Hypothyroidism and Grave's disease (Hyperthyroidism) are two different conditions that affect the thyroid and have different causes, symptoms and treatment. Therefore aggravation based on stress and strain of military service for Hypothyroidism cannot be conceded.

14. In the case in hand, since the RMB has also assessed the disability of the applicant at 11-14% (less than 20%) for life, with regard to the issue relating to entitlement of disability pension when the assessment of a disability by the RMB is less than 20% (11-14%), we may refer to the judgment dated 11.12.2019 of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]***, wherein it was held that the disability element is not admissible if the disability is less than

20%, and that the question of rounding-off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.

Relevant paras of the said judgment read as under:

**“1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of a Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%. xxx xxx xxx 8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even to those who superannuated under Para 8.2. The Court did not deal with the issue of entitlement to disability pension under the Regulations of Para 8.2. 9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.**

**10. The Armed Forces Tribunal („AFT“), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all. 11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.**

**The appeal is allowed accordingly.”**

15. The Hon'ble Supreme Court in its judgment dated 04.09.2019 rendered in the case of **Bachchan Prasad Vs. Union of India & Ors.** [Civil Appeal No. 2259 of 2012] also held that an individual is not entitled to disability element if the disability is less than 20%. Relevant portions of the said judgment read as under:

***“After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability element, as his disability is less than 20%.”***

16. Thus, in view of the circumstances of the instant matter, the disability of applicant 'Hypothyroidism (Old) assessed @ 11-14% for life which is below 20% and is conceded as NANA by the RMB, it does not fulfill the twin criteria as per Rule 153 Pension Regulations for IAF, 1961 (Part-I) and hence is not admissible.

## CONCLUSION

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is not entitled for grant of disability element of pension. The OA stands dismissed being devoid of merits.

18. There is no order as to costs.

Pronounced in open Court on this 8<sup>th</sup> day of April, 2025.

**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

/Pooja/