

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 58 of 2020 with M.A. No. 19 of 2020

Ex. Sub. (Hony. Sub. Maj.) Devta Prasad Pandey
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>02.06.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Shailendra Kumar Singh and Shri Ravi Kumar Yadav, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents.</p> <p>The Original Application has been filed with delay of 19 years, 06 months and 01 day.</p> <p>Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation of delay.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 58 of 2020</u></p> <p>Heard Shri Shailendra Kumar Singh and Shri Ravi Kumar Yadav, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents.</p> <p>Original Application is allowed.</p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 58 of 2020

Wednesday, this the 2nd day of June, 2021

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

**JC 187685-M Sub. (Hony. Sub. Man.) Devta Prasad Pandey (Retd.),
S/o Shri (Late) Raghu Raj Pandey, R/o House No. 570/S-311,
Devalaya, Sainik Nagar, Azad Nagar Road, Post – Alambagh, District
– Lucknow (UP)-226005.**

..... Applicant

**Ld. Counsel for the: Shri Shailendra Kumar Singh, Advocate &
Applicant Shri Ravi Kumar Yadav, Advocate**

Versus

- 1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.**
- 2. The Chief of Army Staff, IHQ, Ministry of Defence (Army), South Block, New Delhi-110011.**
- 3. Additional Directorate General, Personnel Services/AG’s Branch, Integrated HQ of Ministry of Defence (Army), PIN-900256 C/o 56 APO.**
- 4. O IC Records, Army Educational Corps Records, PIN-908777 C/o 5 APO.**
- 5. PCDA (Army), Draupadi Ghat, Allahabad (UP)-211014.**

.....Respondents

**Ld. Counsel for the Respondents. : Shri D.K. Pandey,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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. 5 letter No. G-3/93/34/8/99 dated 05 Jan 2000 (Annexure A-1 of instant OA & Impugned Order) wherein applicant was rejected for grant of disability element.*
- B. *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant with effect from 01.08.1999 and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- C. *to grant the benefit of rounding off of the disability pension from 20% to 50% in terms of Govt of India letter dated 31 Jan 2000 with effect from 01.08.1999 and to pay the arrears alongwith suitable rate of interest as deemed fit and proper 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 Army Educational Corps of the Indian Army on 15.07.1971 and was discharged on 31.07.1999 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board held at Base Hospital, Lucknow 04.03.1999 assessed his disability ‘ESSENTIAL HYPERTENSION (401)’ @30% for two years and opined that disability was due to stress and strain of military service and aggravated by military service. The claim for grant of disability element was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad which opined the disability to be neither attributable to nor

aggravated by military service vide letter dated 05.01.2000. Initially applicant's First Appeal dated 14.10.2013 was returned un-actioned being time barred by Army Education Corps vide letter dated 26.10.2013 and suggested to resubmit the same with delay report and supporting documents. Accordingly, the applicant preferred First Appeal dated 09.11.2013 along with delay report and supporting documents. The respondents had waived off the time limit for consideration of time barred Appeal and asked to resubmit the First Appeal along with medical/service documents as intimated vide IHQ of MoD (Army), PS-4 (Imp-II) letter dated 28.01.2014. Subsequently, Office of DGAFMS vide letter dated 17.10.2014 had intimated that sanction of the DGAFMS has been accorded to hold First Appeal Medical Board of the applicant at Base Hospital, Delhi Cantt. Accordingly, First Appeal Medical Board (First AMB) held at Base Hospital, Delhi Cantt. on 10.01.2015 assessed his disability 'ESSENTIAL (PRIMARY) HYPERTENSION' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. 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 Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military 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, as applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by the First Appeal Medical Board, hence applicant is not entitled to disability pension. He 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 and well as First Appeal 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 Military 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 First Appeal Medical Board has denied attributability to the applicant only by endorsing that the disability 'ESSENTIAL (PRIMARY) HYPERTENSION' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in January, 1995 while posted in Peace location (Secunderabad), 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 First Appeal 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 military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 15.07.1971 and the disability has started after more than 23 years of Army service i.e. in January, 1995. 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 military 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 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."

9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of Shiv Dass vs. Union of India, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

10. As such, in view of the decision of Hon'ble Supreme Court in the case of Shiv Dass (supra), we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

11. In view of the above, the Original Application No. 58 of 2020 deserves to be allowed, hence allowed. The impugned order dated 05.01.2000, annexed as Annexure No. A-1 of Original Application, is

set aside. The disability of the applicant is held as aggravated by Army Service. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 08.01.2020. 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)
Srivastava) Member (A)**

**(Justice Umesh Chandra
Member (J)**

Dated : 02 June, 2021

AKD/-

