

E- Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 326 of 2020**Wednesday, this the 11th day of August, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Rect Satish (3214293N) S/o Gopal Rawat, R/o Village & Post- Manpur, Tehsil- Hathin, District – Palwal, Pin – 121105.

.....Applicant

Ld. Counsel for : **Shri Om Prakash, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi -110106.
2. The Chief of the Army Staff, Sena Bhawan Rafi Marg, New Delhi - 110106.
3. Addl Dte Gen of Pers Services, AG's Branch/PS-4 (Imp-II) IHQ of MoD (Army) DHQ PO, New Delhi – 110011.
4. Officer In- Charge Records, The JAT Regiment, PIN- 900496, C/o 56 APO.
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)- 211014.

.....Respondents

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

ORDER

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

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

A. To allow the application of the applicant and set aside the order dated 29.08.2019 (Annexure No A-1) passed by respondent No 4 vide which grant of disability pension to the applicant has been denied.

B. To issue suitable orders/ directions commanding the respondents to grant disability pension to the applicant for life and to pay the arrears accrued thereon from the date of discharge from Army Service.

C. Any other relief which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case, may be granted in favour of the applicant.

2. The undisputed factual matrix on record is that the applicant was enrolled in Indian Army on 24.03.2018 and was invalided out from service on 15.06.2019. During training i.e. organised swimming on 27.06.2018 the applicant sustained injury and was diagnosed “**BENIGN JOINT HYPERMOBILITY SYNDROME (M-35.7)**”. The injury was considered as attributable to military service vide injury report dated 28.12.2018. At the time of discharge, Invaliding Medical Board held at Military Hospital, Bareilly, assessed disability of the applicant @ 20% for life and considered as neither attributable to nor aggravated by military service. Claim of the applicant for

the grant of disability pension was rejected by the respondents vide letter dated 29.08.2019 being neither attributable to nor aggravated by military service. Being aggrieved, the applicant has approached this Tribunal for the grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in the army in medically fit condition and, thereafter, he has been invalided out from service in Low Medical Category with disability **“BENIGN JOINT HYPERMOBILITY SYNDROME (M-35.7)”** assessed @ 20% for life. He pleaded for the disability of the applicant to be considered as a result of injury sustained while participating in organised swimming which is part of military duty and consider as attributable to and aggravated by military service as opined in the injury report. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is also entitled to disability pension and its rounding off to 50%.

4. Learned counsel for the respondents has not disputed that applicant suffered disability to the extent of 20% for life, but submitted that competent authority while rejecting the claim of the applicant has viewed that disability was assessed @ 20% for life but disability qualifying for disability pension has been assessed as NIL for life and disability was found as neither attributable to nor aggravated by military service by Invaliding

Medical Board as disability would have existed before entering in service, therefore, in terms of Para 132 of the Pension Regulations for the Army, 1961 (Part-I) which states that “the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years”. Since, the petitioner was invalided out of service after having rendered approx one year, two months and 22 days qualifying service, therefore, he is not eligible for grant of service pension. He further submitted that Rule 198 of the Pension Regulations for the Army, 1961 (Part-1) states that, “where the disability is neither attributable to nor aggravated by military service, the minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years service, invalid gratuity shall be admissible. Invalid gratuity is an one time lump sum amount given to the invaliding individual at the scale of half a month’s reckonable emoluments (Pay + Class Pay, if any, last drawn) for six monthly period of service in terms of Rule 201 of ibid Pension Regulations”. Therefore, applicant was neither granted disability pension nor invalid pension due to his not meeting mandatory conditions as prescribed. However he was granted Rs. 14,600/- on account of invalid gratuity. He further submitted that as per Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) which states that “Unless otherwise specifically provided, a disability pension consisting of service

element and disability element may be granted to an individual who is invalided out of 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". In the instant case, since the disability was considered as neither attributable to nor aggravated by military service by a duly constituted Invaliding Medical Board, therefore, applicant is not entitled for grant of disability element of disability pension. Learned counsel for the respondents submitted that claim of the applicant for the grant of disability pension has correctly been rejected.

5. We have heard learned counsel of both the parties and perused the record.

6. The question before us for consideration is simple and straight whether disability of applicant is attributable to or aggravated by military service?

7. In the Statement of Case, opinion of Medical Board dated 11.01.2019, Classified Specialist, Military Hospital, Bareilly has opined the injury sustained by the applicant as attributable to service on the basis of injury report dated 28.12.2018 issued by Commandant, JAT Regimental Centre which reads as under:-

ATTRIBUTABILITY CERTIFICATE IN CASE OF
INJURY IN R/O NO 3214293N RECT SATISH

1. *No. 3214293N Rect Satish of Dograi Coy, Trg Bn, The JAT Regimental Centre sustained injury of moderate nature on 27 Jun*

2018 and was diagnosed with "**B/L RECURRENT SHOULDER DISLOCATION**". The injury of the individual is attributable to mil service and the indl is not to be blamed for the same. C of I in the instant case is not reqd in accordance with provisions of Para 520 (f) of the Regulations for the Army (Revised Edition), 1987, as the indl sustained injury during trg i.e. organised swimming.

2. It is certified that the sustained injury by the indl is attributable to military service.

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Dated: 28 Dec 2018	Comdt, JRC

8. Thus, it is clear that injury sustained to the applicant took place while applicant was participating on 'Advance Military Training' swimming and the same was found attributable by superior authority.

9. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh vs. Union of India & Ors** (supra). 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)."

10. Thus, considering all issues we have noted that Release Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for Military service. Perusal of injury report and in absence of reasons recorded by the Invaliding Medical Board, we are of the view that injury sustained by the applicant did not pre-exist to service but was sustained while swimming and, therefore, was attributable to military service. In absence of any evidence on record to show that the applicant was suffering from disease at the time of acceptance of his service

and the fact that the injury sustained by the applicant was at the time of training which is part of military duty, it will be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to military service. Hence in the circumstances of the case, we are inclined to give the benefit of doubt as per the law settled on this matter vide Hon'ble Apex Court decision in the case of ***Dharamvir Singh*** (Supra). Therefore, we consider the disease of the applicant i.e. **“BENIGN JOINT HYPERMOBILITY SYNDROME (M-35.7)”** as attributable to military service.

11. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off also.

12. In view of the above the Original Application deserves to be allowed.

13. Accordingly O.A. is **allowed**. The impugned order rejecting the claim for grant of disability pension passed by the respondents is set aside. The disability **“BENIGN JOINT**

HYPERMOBILITY SYNDROME (M-35.7)” @ 20% for life is held as attributable to military service. The respondents are directed to grant disability pension to the applicant from the date of discharge @ 20% for life which would stand rounded off to 50% for life. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

14. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)
Member (A)**

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

Dated : 11 August, 2021

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