

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 111 of 2022**

Monday, this the 08 day of August, 2022

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

NTR 16691 F Col. Balram Tiwari (Retired) S/o Late Pauhari Tiwari Last Unit AMC Records Lucknow at present resident of C-174 South City, Raibareli Road, Lucknow-226025.

..... ApplicantLd. Counsel for the : **Shri Yogendra Mishra**, Advocate and
Applicant **Shri Ajay Kumar Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence Government of India, New Delhi-11.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army) of India, New Delhi-11.
3. IHQ of Ministry of Defence (Army), Adjutant Generals Branch DGMS (Army) L Block, New Delhi-110001.
4. The Chairman ACFA Adjutant General Branch/MP 5&6 IHQ of Ministry of Defence (Army), West Block, R.K. Puram, New Delhi-110001.
5. Additional Directorate of Personnel Service, Adjutant General’s Branch A54, (MP-1), IHQ of Ministry of Defence (Army), New Delhi-110001.

.....RespondentsLd. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. 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 :-

- 8.1 *Hon’ble Tribunal may be pleased to set aside the Impugned Order dated 06.7.2021 (Annexure No.A-1)*
- 8.2 *Hon’ble Tribunal may be pleased further to grant benefit of disability pension of Primary Hypertension Type-II Dabetes, Dyslepedemia as mentioned in Sl. (b) (c) (d) of letter dated 18.03.2021.*
- 8.3 *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Army on 01.01.1984, commissioned in the Indian Army Medical Corps on 24.04.2002 and was retired from service on 31.01.2021(AN) on attaining the age of superannuation in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Base Hospital Lucknow on 07.11.2020 assessed his disabilities (i) **‘PIVO L5 S-1(M51.2)’ @30%** for life as aggravated by service (ii) **‘PRIMARY HYPERTENSION (I-10) @ 30%** for life (iii) **‘TYPE-II DIABETES MELLITUS (E11)’ @ 20%** for life and (iv) **‘DYSLIPIDEMIA (E-78)’ @5%** for life, **composite disabilities @64% for life** and opined the disabilities Nos. (ii), (iii) and (iv) to be neither attributable to nor aggravated (NANA) by service.

Accordingly, the applicant has been granted disability element of disability pension @30% for life which has been rounded off to 50% for life for the first disability. The applicant's claim for grant of disability element of disability pension for the disabilities (ii), (iii) and (iv) was rejected vide letter dated 18.03.2021. The applicant preferred First Appeal which too was rejected vide letter dated 06.07.2021. 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 commissioning, 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 commissioning in Army. The second, third and fourth diseases of the applicant were also contracted during the service, hence they are also 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 and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the first disease of the applicant has been regarded aggravated by service, hence, he was granted disability element @30% rounded off to 50% for life. He further contended that second, third and fourth disabilities i.e. **'PRIMARY HYPERTENSION (I-10), 'TYPE-II DIABETES MELLITUS (E11)'** and **'DYSLIPIDEMIA (E-78)'** of the applicant have been regarded

as NANA by the RMB, hence as per Regulation 81 of the Pension Regulations for the Army, 2008 (Part – I) the applicant is not entitled to disability element of disability pension for these disabilities. 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 proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the second, thirds and fourth disabilities of the applicant are also attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for these disabilities also?

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 second and third disabilities i.e. '**PRIMARY HYPERTENSION (I-10)**, and '**TYPE-II DIABETES MELLITUS (E11)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities on 04 Feb 2020 while posted in Peace location (Lucknow AMC Records), therefore, applicant is not entitled to disability element of disability pension for these disabilities. 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 disability pension to applicant for these disabilities are 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 on 01.01.1984 and commissioned in Indian Army on 24.04.2002 and the second and third disabilities have started after more than 35 years of Army service i.e. on 04.02.2020. 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 second and third disabilities of the applicant should also be considered as aggravated by military service. However, with regard to fourth disability we are agree with the opinion of the RMB as NANA as it is a life style disorder.

8. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

9. In the instant case there are functional effects of the first, second and third disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first disability is 30%, second disability is @20% and third disability is @20% for which we are of the view that there is overlapping. Accordingly, we reduce the total and we hold that composite assessment of first, second and third disabilities is @60% for life.

10. 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.”

11. 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.

12. 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 @60% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his retirement.

13. In view of the above, the **Original Application No. 111 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the second and third disabilities are set aside. Be it mentioned that the applicant's first disability has already been regarded as aggravated by military service and the applicant is getting disability element @30% rounded off to 50% for life. The second and third disabilities of the applicant are also held as aggravated by Army Service. The applicant is held entitled to get disability element @60% for life which would be rounded off to

75% for life from the next date of his retirement. The respondents are directed to grant disability element to the applicant @60% for life which would stand rounded off to 75% for life from the next date of his retirement. The disability element of disability pension paid @50% from the next date of applicant's retirement shall be adjusted from the arrears. 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

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08 August, 2022

AKD/-