A.F.R.

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 14 of 2023

Thursday, this the 10th day of August, 2023

"Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

Ex. Rect. Rinku Yadav (No. 15740548-M), House No. RZ 1077, IIIrd Floor, Gali No. 5/7, Main Sagarpur, New Delhi-110046.

….. **Applicant**

Ld. Counsel for the Applicant : **Shri Vinay Pandey, Advocate**
Shri Devendra Kumar, **Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.

2. Chief of Army Staff, Integrated HQ of MoD (Army), New Delhi-110011.

3. Senior Record Officer, The Records Signals, PIN-908770, C/o 56 APO.

4. PCDA (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. :**Dr. Shailendra Sharma Atal,**
Senior Central Govt. Standing Counsel

ORDER (ORAL)

"Per Hon'ble Mr. Justice Ravindra Nath Kakkar, 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. 14 of 2023, for the following reliefs:-

> *(a) Direct the respondents to grant disability pension to the applicant duly round off to 100% w.e.f. his date of discharge.*
>
> *OR*
>
> *Direct the respondents to grant Invalid Pension to the applicant w.e.f. his date of discharge.*
>
> *(b) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
>
> *(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 08.09.2014 and was invalided out from service

on 25.06.2016 in low medical category **S1H1A1P5E1** after rendering 01 year and 287 days of service under Rule 13 (3) Item IV of Army Rules, 1954. The Invaliding Medical Board (IMB) held at Military Hospital, Panaji (Goa) on 30.05.2016 assessed his disability '**RENAL TRANSPLANT RECIPIENT'** @90% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. Applicant's claim for grant of disability pension was rejected vide letter dated 12.01.2018. The applicant served Legal Notice dated 17.05.2019 which too was rejected vide letter dated 29.06.2019. First Appeal dated 27.07.2019 filed by the applicant was also rejected vide letter dated 15.10.2019. It is in this perspective that the applicant has preferred the present application.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment. During training he was diagnosed to be suffering from **"RENAL TRANSPLANT RECIPIENT"** and his disability was assessed @ 90% for life and opined to be neither attributable to nor aggravated (NANA) by service. Applicant was invalided out from service on recommendations of the medical board. Claim of the applicant for grant of disability pension was rejected. Applicant is entitled invalid pension in terms of Rule 197 of the Army Pension Regulation, 1961. Govt of India,

Min of Def impugned policy letter dated 16.07.2020 entitles such personnel for invalid pension who are invalided out of service with less than 10 years of qualifying service on account of any bodily or mental infirmity, which is neither attributable to nor aggravated by military service and Govt servant who retired from service on account of any bodily or mental infirmity. The sole aim of issuing of this policy letter was to mitigate the sufferings of those employees who were declared permanently unfit for service and thrown out of service without pension. The disease of the applicant was contacted during the service and in Summary and Opinion dated 10.05.2016 Col A Jairam, Senior Advisor Medicine and Nephrology has stated that individual has no past history of Nephritic or Nephritic illness, hence it is attributable to and aggravated by Military Service. Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors***, reported in (2014) STPL (WEB) 468 SC, Order dated 03.07.2023 of Armed Forces Tribunal, Principal Bench, New Delhi passed in Original Application No. 2148 of 2019, ***Ex. Rect. Bhanu Prakash Rao Karri Versus Union of India & Others*** and order of this Tribunal passed in O.A. No 646 of 2021, ***Ex Rect Sudhakar Singh Vs Chief of the Army Staff and others***, decided on 14.02.2022 and contended that since applicant's services were cut short and he was invalided out from service prior to completion of

terms of engagement, therefore, applicant deserves to be granted disability pension and its rounding off to 100% or invalid pension.

4. On the other hand, learned counsel for the respondents argued that Medical Board, being an expert body, who physically examined the applicant, had considered the disability of the applicant as NANA and applicant was not fulfilling the conditions for grant of disability pension as laid down in Para 179 of Pension Regulations for the Army, 1961 (Part-I), hence claim of the applicant for grant of disability pension was rejected by PCDA (P), Allahabad. Learned counsel for the respondents further submitted that applicant was not fulfilling the conditions for grant of Invalid Pension in terms of para 198 of Pension Regulations for the Army, 1961 (Part-I) which stipulates that minimum period of qualifying service required for invalid pension is 10 years. For less than 10 years qualifying service an invalid gratuity only shall be admissible. Govt of India, MoD has issued provision of invalid pension to Armed Forces Personnel before completion of 10 year of qualifying service vide letter dated 16.07.2020. Para 4 of this policy letter states that "*The provision of this letter shall apply to those Armed Forces Personnel who were/ are in service on or after 04 Jan 2019. The case in respect of personnel who were invalided out from service before 04 Jan 2019 will not be re-opened".* Since the applicant was invalided out from service wef 25.06.2016 i.e. before 04 Jan 2019, he is not entitled

for invalid pension as per the above provision. The instant O.A. filed by the applicant lacks merit and substance and is liable to be dismissed.

5. The pleaded assertions and the arguments based thereon have received our due consideration. The question before us to decide is "whether the disability of the applicant is attributable to military service and whether applicant can be granted invalid pension?

6. In the instant case the applicant was enrolled in Army on 08.09.2014, and the disease applicant was found to be suffering with in medical test first started on 25.04.2015 i.e. within eight months of his enrolment. Be that as it may, the sustainability of the denial of disability pension to the applicant has to be essentially tested on the touch stone of the compliance of the relevant Rules and Regulations. Apt, it would thus be to advert to the relevant provisions thereof at the threshold. The law on this point is very clear as reported in (2014) STPL (WEB) 468, ***Sukhwinder Singh vs Union of India & Ors***. Para 9 of the aforesaid judgment being relevant is reproduced as under:-

> "*9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed*

Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."

7. In Part V of Invaliding Medical Board, disability has been assessed as neither attributable to nor aggravated (NANA) by military service in terms of para 69 of Chapter VI of Guide to Medical Officers, 2008. Para 69 reads as under-

69. Acute Renal Failure. *It is a rapid deterioration in renal function sufficient to result in accumulation of nitrogenous wastes in the body. The common causes are: (a) Acute Glomerulonephritis : -Due to post streptococcal infection. -Occult visceral sepsis -Infective endocarditis -SLE, vasculitis (b) Acute Tubulo-interstitial Nephritis : -Acute pyelonephritis, chronic pyelonephritis -Chronic UTI -Acute tubular necrosis -Arteriolar nephrosclerosis -Analgesic nephropathies -Nephrotoxins e.g. antibiotics and radiography contrast media -Transplant rejection -Multiple myeloma, leukaemia (c) Acute Tubular Necrosis: -Hypovolemia due to burns, hemorrhage -Vascular pooling in anaphylaxis, Sepsis and drugs -Decreased cardiac output in CVS failure. -Haemolysis*

in malaria -Rhabdo-myolysis in trauma and heat stroke -Infection e.g. Diarrhoea, Septic abortion, peritonitis, pancreatitis -Drugs - contrast media, anaesthetic agent (d) Calculus: Sixty to eighty percent of adults suffering from acute glomerulonephritis recover over a period of 2 to 4 years. Twenty to forty percent of the cases have 50 residual hypertension and asymptomatic urinary abnormalities. Majority of Acute renal failure cases recover. Only ten percent of cases progress to chronic renal failure. ***If Acute renal failure follows trauma on duty, infection hypovolemia, drug therapy, attributability can be conceded. When associated with multi-system disease, aggravation due to service can be examined based on his service profile.***

8. In para 69, Chapter VI of Guide to Medical Officers, 2008, it is stated that in disease of Renal Transplant Recipient, if acute renal failure follows trauma on duty, will be conceded as attributable to military service.

9. In view of Hon'ble Apex Court's judgment, it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In the instant case the IMB has only endorsed that disability is not due to infection (no H/o trauma), hence, NANA. Further in summary and opinion of Invaliding Medical Board dated

10.05.2016, Col A Jairam, Senior Advisor (Medicine and Nephrology), has stated that applicant has no past history of Nephritic or Nephrotic illness, Renal stone disease or recurrent UTL, hence it is clear that disability sustained during service and is attributable to military service.

10. Second point is grant of invalid pension. For grant of invalid pension, para 197 of the Pension Regulations for the Army 1961 (Part I) being relevant is reproduced as under:-

> *(b)* ***Para 197 of Pension Regulations for the Army 1961 (Part- 1) - (Invalid Pention/Graduity when Admissible)***
>
> *197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter to:-*
>
> *(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;*
>
> *(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated by service, but the disability is assessed less than 20% and*
>
> *(c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category.*

11. The applicant was invalided out after serving for about 1 year and 8 months and is not eligible for getting invalid pension as per

Rule 198 of the Pension Regulation for the Army, 1961, which reads as under:-

> 198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible.

12. It is undisputed that soon after the applicant had joined the service on 08.09.2014 having been adjudged to be fully fit therefor, following a rigorous medical test, he fell ill and had to be hospitalized where he was diagnosed in due course, to be afflicted by '**RENAL TRANSPLANT RECIPIENT'**. It is a matter of record that the applicant was hospitalized and during his short tenure ranging from 08.09.2014 to 26.06.2016 he was invalided from service. Undoubtedly the guiding course in this regard have been outlined in Regulation 173, Rule 5, 9 and 14 in particular of the Rules as well as paras 7, 8, and 9 of the "General Principles. Expedient it would be thus to set out these provisions for ready reference.

13. Regulation 173 which deals with primary conditions for the grant of disability pension reads as under:

> *"**173**. Primary conditions for the grant of disability pension; Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a*

disability which is attributable to or aggravated by Army service and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by Army service shall be determined under the rule in Appendix II."

14. Rule 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982 reads as under:

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any determination in his health, which has taken place is due to service."

9. Onus of proof: - The claimant shall not be called upon to prove the conditions ofentitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

"14. Diseases.- In respect of diseases, thefollowing rule will be observed=

(a) Cases in which it is established that conditions of Army service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of

aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for Army service.However, if medical opinion holds, for reasons to be stated,that the disease could not have been detectedon medical examination prior to acceptance forservice, the disease will not be deemed to havearisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of Army service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in Army service."

(emphasis supplied)

15. Chapter – II of the Guide to Medical Officers (Military Pension), 2002 which sets out the "Entitlement: General Principles", Paras, 7, 8 and 9 of the guidelines read as under:

"**7**. *Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's Army service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorisation of the member on enrolment and/or*

cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

(a) Certain congenital abnormalities which are latent and only discoverable on full investigation e.g. Congential defect of Spine, Spina bifida, Sacralistaion,

(b) Certain familial and hereditary diseases e.g. Haemophilia,Congential Syphilis, Haemoglobinopathy.

(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.

8. *The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.*

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the

> *family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.*
>
> ***9.*** *On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement,. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realised on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."*

16. The Regulation, Rules and General Principles concededly are statutory in nature and thus uncompromisingly binding on the parties.

17. A conjoint reading of these provisions, unassailably brings to the fore, a statutory presumption that a member of the service governed thereby is presumed to have been in sound medical condition at the entry, except as to the

physical disability as recorded at that point of time and that if he is subsequently discharged from service on the ground of disability, any deterioration in his health has to be construed to be attachable to his service. Not only the member in such an eventuality, could not be called upon to prove the conditions of his entitlements, he would instead be entitled to the any reasonable doubt with regard thereto. Regulation 173 in clear terms not only mandates that disability pension may be granted to an individual invalided from service on account of disability which is attributable to and aggravated by Army service and is assessed as 20%, it specifically provides as well that the question as to whether such disability is attributable to or aggravated by Army service is to be determined by the Rules. Rule 14(b) in specific terms enjoins that a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of his acceptance for Army service. The exception to this deduction is, only in the event of a medical opinion, supported by reasons to the effect that the disease could not have been detected on medical examination prior to acceptance for service whereupon it would be deemed that the disease had not arisen during service. The underlying

ordainment of these salutary provisions are patently supportive of the inference that the disease/disability for which a member of a Army service is boarded out had been contracted by him during his tenure unless the same is displaced by cogent, coherent and persuasive reasons to be recorded by the Medical Board as contemplated. Absence of such a presumption in favour of attributability to the Army service or aggravation thereby, displaceable though, cannot be readily assumed unless endorsed by contemporaneous records and overwhelming reasons recorded by the invaliding Medical Board to the contrary. The acknowledged primacy extended to the opinion of the Medical Board, and its views and recommendations thus assuredly would have to be subject to the hallowed objectives of the relevant provisions of the Rules, Regulations and the General Principles laden with the affirmative presumption in favour of the member of the service. Not only the manifest statutory intendment and the avowed purpose of these provisions cannot be disregarded, a realistic approach in deciphering the same has to be adopted. The incident of invaliding a member of the Army service entails curtailment of the normal tenure for his recorded disability to the extent of 20% or more and thus in

our own comprehension, the disentitling requisites would have to be stringently construed. The decisive determinant as per the relevant provisions of the Regulations, Rules and the General Principles, is the attributability of the disability involved or aggravation thereof to Army service. It cannot be gainsaid, however, that there ought to be at least a casual and perceptible nexus between the two, but denial of disability pension would be approvable, only if the disability by no means can be related to the Army service. The burden to disprove the correlation of the disability with the Army service has been cast on the authorities by the Regulation, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance of the letter and spirit thereof, consequently invalidating the decision of denial. Though the causative factors for the disability have to be the rigor of the military conditions, no insensitive and unpragmatic analysis of the relevant facts is envisaged so as to render any of the imperatives in the Regulations, Rules and General Principles otiose or nugatory. To the contrary, a realistic, logical, rational and purposive scrutiny of the service and medical profile of the member concerned is peremptory to sub-serve the true purport and

purpose of these provisions. To reiterate, invaliding a member from the service presupposes truncation of his normal service tenure thus adjudging him to be unsuitable therefor. The disability as well has to exceed a particular percentage. The bearing of the Army service as an aggravating factor qua even a dormant and elusive constitutional or genetic disability in all fact situations thus cannot be readily ruled out. Hence the predominant significance of the requirement of the reasons to be recorded by the Medical Board and the recommendations based thereon for boarding out a member from service. As a corollary, in absence of reasons to reinforce the opinion that the disability is not attributable to the Army service or is not aggravated thereby, denial of the benefit of disability pension would be illegal and indefensible.

18. Para 4 of Entitlement Rules for grant of Casualty Pensionary Awards, 1982 deals with grant of Invalid pension which reads as under:-

> *"(d) **Entitlement Rules for Casualty Pensionary Awards, 1982***
>
> *4. Invaliding from service is necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulation, is in a lower medical category than that in which he was recruited, will be treated as invalided from service. JCOs/ORs & equivalents in other services who are placed permanently in a medical*

category other than "A" and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.

19. A plain reading of the provisions of relevant portion of Pension Regulations clearly lay down conditions for grant of disability pension and invalid pension. Both pensions are governed by different provisions of Pension Regulations. Grant of invalid pension is governed by para 197, 198 of Pension Regulations for the Army 1961 and Entitlement Rules for Casualty Pensionary Awards 1982.

20. In view of the aforesaid discussions, we are of the considered view that when a person is discharged in lower medical category than in which he was recruited, he would be treated to be invalided out of service. Admittedly, the applicant was recruited in a medically fit condition and was discharged in low medical category, thus, as per para 4 of Entitlement Rules, he is to be treated as invalided out of service. Since he has been considered as invalidated out of service he becomes entitled to the benefits accruing from the provisions of paras 197 and 198 of Pension Regulations and, therefore, he is to be considered entitled for invalid pension. Invalid pension can be granted to an individual after 10 years of service and it is granted to an individual who is invalided out of service on

account of disability which is neither attributable to nor aggravated by military service.

21. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of IMB for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. We are, therefore, of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant, and the disability of the applicant should be considered as aggravated by military service. Medical Board had failed to record any reason whatsoever in support of its conclusion that either the disease detected or the disability consequent thereupon was neither attributable to Army service nor aggravated thereby, he urged that the respondent could not have been denied disability pension without any valid remark. The relevant rules and regulations are to be essentially construed and interpreted liberally and in the realistic perspectives and not pedantically to facilitate effectuation of the purpose thereof.

22. The requirement of recording reasons is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions.

Having regard to the letter and spirit of the Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law.

23. The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; ***Union of India & Others vs. Rajbir Singh*** in which this Court on an exhaustive and insightful exposition of the aforementioned statutory provisions had observed with reference as well to the enunciations in ***Dharamvir Singh vs. Union of India*** 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure. It was observed that there may indeed be cases where the disease is wholly unrelated to Army service but to deny disability pension, it must affirmatively be proved that the same had nothing to

do with such service. It was underlined that the burden to establish disability would lie heavily upon the employer, for otherwise the Rules raise a presumption that the deterioration in the health of the member of the service was on account of Army service or had been aggravated by it. True to the import of the provisions, it was held that a soldier cannot be asked to prove that the disease was contracted by him on account of Army service or had been aggravated by the same and the presumption continues in his favour till it is proved by the employer that the disease is neither attributable to nor aggravated by Army service. That to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension was emphatically stated. As we respectfully, subscribe to the views proclaimed on the issues involved in ***Dharamvir Singh*** (supra) and ***Rajbir Singh***(supra) as alluded hereinabove, for the sake of brevity, we refrain from referring to the details. Suffice it to state that these decisions do authoritatively address the issues seeking adjudication in the present case.

24. 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 & or***s (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.
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> 5. We have heard Learned Counsel for the parties to the lis.
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> 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."

25. 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 pension @90% for life to be rounded off to 100% for life may be extended to the applicant from the next date of his discharge.

26. In view of principles laid down in the judgments passed by Hon'ble Apex Court in Civil Appeal Nos 4357-4358 of 2015, ***Union of India & Ors Vs Manjeet Singh*** decided on 12.05.2015, Judgment passed by AFT, Principal Bench, in O.A. No 2148/2019, ***Ex Rect Bhanu Prakash Rao Karri Vs Union of India & Ors*** decided on 03.07.2023 and this Tribunal judgment and order passed in the O.A. No 368 of 2019, ***Ex Rect Chhote Lal Vs. Union of India & Ors*** decided on 16.07.2020, we are of the considered view that the applicant who suffered disability of '**RENAL TRANSPLANT RECIPIENT'** and invalided out of service on account of the said

disability is entitled to invalid pension, irrespective of the fact that he is not qualified in terms of minimum qualifying period of service. The respondents are thus directed to grant invalid pension as per Rule 197 of the Pension Regulation for the Army, 1961 (Part-1).

27. In view of the above, the **Transferred Application No. 14 of 2023** deserves to be allowed, hence allowed. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability pension @90% for life which would be rounded off to 100% for life. The respondents are directed to grant disability pension to the applicant @90% for life which would stand rounded off to 100% for life from the next date of his discharge. 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

28. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 10 August, 2023
Ukt/-