

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 913 of 2022**Wednesday, this the 15th day of February, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

JC -207193X, Ex. Sub (Hony Sub Maj), Ram Naresh,
S/o Late Kanhya Lal,
Resident of 22, Gomti Vihar Colony,
Sarpotganj, Ring Road, Telibagh, Lucknow (U.P), Pin-226002

..... Applicant

Ld. Counsel for the : **Shri R Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, New Delhi -11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi-11.
3. The Officer in Charge, ASC Records (South), Bangalore - 560007.
4. The Chief Controller of Defence Accounts, Draupadi Ghat, Allahabad (U.P).

.....Respondents

Ld. Counsel for the : **Mrs. Purna 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

:-

- (I) *Hon’ble Tribunal may be pleased to set aside the impugned order dated 04/11/2003 (Annexure No.A-1)*

Order dated 26/04/2005 (Annexure No.A-2) and Order dated 21/12/2006 (Annexure No.A-3).

- (II) Hon'ble Tribunal may be pleased to direct the respondents to grant Disability Element with effect from 01/06/2003 (next date of discharge) with the interest at the rate of 18% per annum.*
- (III) Hon'ble Tribunal may be pleased further to grant benefit of rounding off disability pension @50% in terms of Ram Avtar's Case.*
- (IV) 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 Indian Army on 21.08.1974 and discharged on 31.05.2003 in Low Medical Category on completion of terms of engagement under Rule 13 (3) Item I (i)(a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital Air Force on 23.01.2003 assessed his disability '**DIABETES MELLITUES TYPE 2 (ICD -250)**' @15-19% for life and opined the disability to be neither attributable to nor aggravated by service. The disability claim of the applicant was however rejected by the respondents vide letter dated 18.10.2003 on the ground that it is assessed less than 20% which was communicated to the applicant vide letter dated 04.11.2003. The applicant preferred First Appeal dated 18.03.2004 against the rejection of disability claim which was rejected vide letter dated 26.04.2005. The applicant preferred Second appeal dated 08.03.2006 which was too rejected vide letter dated 21.12.2006. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that the RMB has assessed the applicant's disability as neither attributable to nor aggravated by service @15-19% for life but the disease with which applicant suffers is Diabetes Mellitus and as per Office of the DGAFMS, Ministry of Defence letter No. 16036/DGAFMS/MA (Pens)/Policy dated 20.07.2012 issued with reference to Guide to Medical Officers, the degree of disablement in case of Diabetes Mellitus Type II cannot be assessed less than 20%. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that the RMB has assessed the applicant's disability @15-19% for life as neither attributable to nor aggravated by service. Since the disability element is less than 20% as NANA, therefore, condition for grant of disability pension is not fulfilled in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I). Therefore, the respondents have rightly denied the benefit of disability element of disability pension to applicant. He pleaded for dismissal of 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 assessment of 15-19% of disability in the case of Diabetes Mellitus Type II is in accordance with extant rules/guidelines?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On careful scrutiny of the documents, we find that the RMB has assessed the applicant's disability Diabetes Mellitus Type II @15-19% for life as neither attributable to nor aggravated by service. In this regard when we see the said provisions, we observe that as per Office of the DGAFMS, Ministry of Defence letter No. 16036/DGAFMS/MA (Pens)/Policy dated 20.07.2012 issued with reference to Guide to Medical Officers, the degree of disablement in case of Diabetes Mellitus Type II cannot be assessed less than 20%. Therefore, we are of the view that applicant's disability should be assessed @20% in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

7. 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)."

8. 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 disability of the applicant is neither attributable to

nor aggravated (NANA) by service and constitutional in nature, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Army on 21.08.1974 and the disability has started after more than 27 years of service i.e. on 26.05.2002. 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*** (supra), and the disability of the applicant should be considered as aggravated by service.

9. 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 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.

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."*

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Ram Avtar** (supra), we are of the considered view that benefit of rounding off of disability element of disability pension @20% 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. 913 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held

as aggravated by military service @ 20% for life. The applicant is entitled to get disability element of disability pension @20% for life which would be rounded off to 50% for life from three preceding years from the date of filing of the Original Application. The respondents are directed to grant disability element of disability pension to the applicant @20% for life duly rounded off to 50% for life from three preceding years from the date of filing of the Original Application. The date of filing of the Original Application is 02.11.2022. 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 actual payment.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15th February, 2023

SB/Ashok