

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 236 of 2019**Monday, this the 18<sup>th</sup> day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**IC-48668F Lt Col (Retd) Abbas Ali Khan  
Son of Late Shri S Khan  
R/o H No. S-611 Sanskriti Enclave,  
Eldeco Colony, Udyan Nagar, Udyan-III,  
Delhi Public School, Rae Bareilly Road,  
PO-Ambedkar University, Distt – Lucknow-226025

..... Applicant

Ld. Counsel for the Applicant: **Shri Virat Anand Singh**, Advocate

Versus

1. Union of India through, The Secretary Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ P.O., New Delhi – 110011.
3. Additional Directorate General of Manpower (Policy and Planning)MP6 (F), Adjutant General's Branch, IHQ of MoD(Army), Wing No. 07, IInd Floor, West Block-III, RK Puram, New Delhi-66.
4. The Commandant, Military Hospital, AVADI.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,  
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(i) To quash and set aside the findings of RMB opinion dte 09/03/2009  
Rejection of FIRST APPEAL dte 11/06/15  
Rejection of SECOND APPEAL dte 05/08/16

- (ii) To grant Disability pension to Applicant for PRIMARY HYPERTENSION @ 30% for life as Attributable/ Aggravated by service as the case deem fit.
- (iii) To declare composite percentage of both the disabilities and then to ROUND-OFF the composite percent.
- (iv) To grant arrears of disability pension as applicable.
- (v) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.”
- (vi) Allow this application with cost.

2. The facts of the case, in brief, are that applicant was commissioned in the Army on 10.06.1989 and retired from service on 31.05.2013 (AN) on reaching the age of superannuation. The Release Medical Board (RMB) assessed his disabilities (i) “**B/L SNHL**” @ 30% for life, aggravated by military service and (ii) “**PRIMARY HYPERTENSION**” @ 30% for life as neither attributable to nor aggravated by military service (NANA) and net assessment qualifying for disability pension with duration was 30% for life. His disability pension claim was rejected vide order dated 15.09.2014. Thereafter, applicant preferred 1<sup>st</sup> appeal on 22.10.2014 against rejection of disability claim which was adjudicated by the Appellate Committee of First Appeal (ACFA) and regarded the first disability i.e. “**B/L SNHL**” as aggravated by military service and second disability was conceded as NANA vide order dated 11.06.2015. Subsequently, the applicant preferred second appeal dated 17.08.2015 against partly rejection of his disability pension claim which was adjudicated and rejected vide

order dated 05.08.2016. The applicant is in receipt of disability pension for first ID i.e. B/L SNHL @ 30%, rounded off to 50% for life.

3. Learned Counsel for the applicant submitted that applicant's claim for disability pension for "Primary Hypertension" has been rejected without any application of mind hence this Original Application has been filed. He further submitted that composite assessment after adding both the disabilities had to be taken into account and benefit of rounding off had to be ascertained according to percentage of both the diseases. He also relied upon the judgment of the Hon'ble Apex Court in the case of ***Dharamveer Singh vs. Union of India and Others*** (2013), 7 SCC 316, ***Veer Pal Singh vs. Secretary MoD*** (2013) 8 SCC 83, ***Union of India and Others vs. Rajbir Singh*** (2015) 12 SCC 264 and ***Union of India vs. Manjeet Singh*** (2015) 12 SCC 275 and pleaded for grant of disability element of "Primary Hypertension"@ 30% for life and then to round off the composite percentage of both the disabilities.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the applicant is already in receipt of 30% disability rounded off to 50% for life, hence, as per Regulation 53 of Pension Regulations for the Army, 2008, Part-1, he is not entitled for disability element of his disability "Primary Hypertension". He further submitted that Second Appellate Authority had rejected the appeal of the applicant stating that:-

*"Perusal of the enclosed medical/service document of the appellant reveals that onset of the ID was in Bathinda in Sep 2008 during AME. He was managed with anti hypertensive drugs. At RMB, he*

*was normotensive on medication and there was no evidence of target organ damage, ID Primary Hypertension is idiopathic in origin and is, per se, not attributable to service. Aggravation may be conceded if onset occurs during Fd/CI/Ops/HAA service or if indl is posted to these areas following onset. In the instant case, onset of the ID was in Sep 2008 at Bathinda (Peace) and he continued to service in peace station till retirement. Hence, the ID is conceded as neither attributable to nor aggravated to military service in terms of Para 43, Chap VI, GMO 2002 Amdt 2008”.*

5. Learned counsel for the respondents further submitted that applicant does not fulfil the conditions for grant of disability element for ‘Primary Hypertension’ in terms of Para 43, Chapter VI of Guide to Medical Officers (GMO) 2002, Amdt 2008 and Regulation 53 of Pension Regulations for the Army, 2008, Part-1, therefore, the competent authority has rightly denied the benefit of disability element of pension for ‘Primary Hypertension’ to applicant. He pleaded for dismissal of O.A.

6. From perusal of counter affidavit it appears that this is the second O.A. filed by the applicant. Initially, applicant had filed O.A. No. 702 of 2017 before this Tribunal in which following prayer was made :-

- (a) Issue/pass an order or direction of appropriate nature to the respondents to give the benefits of “rounding off” of the disability pensionary benefits from 30% to 50% as provided vide Government of India, Ministry of Defence letter No. 1 (2)/97/D (Pen-C) dated 31.01.2001 and circular No 429 dated 04.03.2010 supported by the position held by the Supreme Court. The applicant may be granted benefit of rounding off the disability pension w.e.f. 01.06.2013.
- (b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (c) Allow this application with exemplary cost.

7. The aforesaid Original Application was disposed off by granting benefit of rounding off to applicant from 30% to 50% for life from the

date of discharge. The operative portion of the order dated 12.09.2018 is reproduced below :-

*“7. In view of the above, the Original Application deserves to be allowed, hence allowed. The disability pension assessed as 30% for life shall stand rounded off to 50% for life from 01.06.2013 i.e. date of discharge. The respondents are directed to grant rounding off of disability pension to the applicant alongwith arrears 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 @ 9% on the amount accrued from due date till the date of actual payment.”*

8. We have given our considerable thoughts to both sides and have carefully perused the records. In the facts of the case we find that when RMB had noticed two disabilities i.e. (i) **“B/L SNHL”** @ 30% for life, aggravated by military service and (ii) **“PRIMARY HYPERTENSION”** @ 30% for life as neither attributable nor aggravated by military service (NANA) and had net assessed qualifying disability with duration @ 30% for life, however applicant’s disability pension claim was rejected vide order dated 15.09.2014, and first appeal preferred against the order was partly allowed with regard to disability (i) only and was rejected regarding disability (ii) and second appeal preferred against the part rejection was also dismissed, and thereafter O.A. No. 702 of 2017 was confined to relief of rounding off of disability pension in respect disability (i) only and no relief regarding grant of disability pension with regard to disability (ii) was claimed, applicant’s claim in respect of grant of disability pension for disability (ii) **“Primary Hypertension”** @ 30% for life would not be maintainable. It is settled in law that all reliefs flowing from a cause of

action should be claimed in one suit only, separate suit in respect of relief flowing from the same cause of action is barred under Order 2, Rule 2 (2) and Order 2 Rule 3 of the C.P.C. This being the position, present Original Application being not maintainable is liable to be dismissed.

9. Original Application is therefore **dismissed** accordingly.

10. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: January, 2021  
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