

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 271 of 2020**

Thursday, this the 21st day of January, 2021

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

No. 2784952 F Ex. Sep. Jangle Nana Vitthal, Son of Vitthal Jangle, Resident of Village/Mohalla Bhodokharu, P.O. Kuchera, Tehsil Milkipur, District Ayodhya (U.P.).

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate.
Applicant

Versus

1. Second Appellate Committee on Pension (SACP), Additional Director General of Personnel Services, Adjutant Generals Branch/PS-4 (Imp-II), Integrated Headquarters of M o D (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110011.
2. Commandant-cum-Chief Record Officer and Centre, MARATHA LI Centre & Records, PIN 900499, C/O 56 APO.
3. Union of India through Secretary, Ministry of Defence, New Delhi-110011.

.....**Respondents**

Ld. Counsel for the : **Shri Yogesh Kesarwani**,
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.

- (a) *To quash the rejection order signed by an officer of the rank of Lt. Col. Senior Records Officer signing for the OIC Records The MARATHA LI bearing no. 2784952/SR/PG-3(DP) dated 13 Jul 2019 rejecting the second appeal of the applicant with all the consequential benefits to the applicant.*
- (b) *To quash the rejection order signed by an officer of the rank of Maj. Senior Record Officer signing for the OIC Records MARATHA LI bearing no. 2784952/SR/PG-3(DP) dated 28 Dec 2017 rejecting the first appeal of the applicant with all the consequential benefits to applicant.*
- (c) *To quash the rejection order of the Principal Controller of Defence Accounts (Pensions), Allahabad order rejecting the claim of the applicant for payment of disability pension with all the consequential benefits to applicant.*
- (d) *To grant the benefit of the rounding off (broad banding) as catered for in the Government of India Ministry of Defence New Delhi policy letter No.1(2)/97/I/D(Pen-C) dated 31 Jan 2001 with all the consequential benefits to the applicant.*
- (e) *To issue any other order or direction considered expedient and in the interest of justice and equity.*

(f) *Award cost of the petition.*

2. Briefly stated, applicant was enrolled in the Indian Army on 29.01.1988 and was discharged on 30.04.1996 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (V) of the Army Rules, 1954. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Jamnagar on 05.02.1996 assessed his disability '**SCHIZOPHRENIA 295 (V 67)**' @ 40% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected by the Principal Controller of Defence Accounts vide their letter dated 25.09.1997. The applicant preferred representation dated 16.02.2016 but . 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 enrolment, 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 enrolment in Army. The disease of the applicant was contacted during the service, hence it is 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 as well as arrears

thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 40% for two years has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. 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 disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

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 disability '**SCHIZOPHRENIA 295 (V 67)**' is neither attributable to nor aggravated (NANA) by service on the ground of a Psychiatric case, onset no relation to service condition, no causative factor could be isolated, therefore, applicant is not entitled to 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 cryptic and is not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 29.01.1988 and the disability has started after more than five years of Army service i.e. in the year 1993 that too in OP RHINO (Assam Bengal area). 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 disability of the applicant should be considered as aggravated by military service.

8. 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.”

10. 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*), we are of the considered view that benefit of rounding off of disability pension @40% for two years to be rounded off to 50% for two years may be extended to the applicant from the next day of discharge i.e. 01.05.1996.

11. Since the applicant's RMB was valid for two years w.e.f. 01.05.1996, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

12. In view of the above, the **Original Application No. 271 of 2020** deserves to be allowed, hence **allowed**. The impugned order dated 25.09.1997, annexed as Exhibit R-2 of Counter Affidavit and impugned orders dated 13.07.2019 and 28.12.2017, annexed at page No. 27 and 28 respectively to Original Application, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is held entitled to get disability element @40% for two years which would be rounded off to 50% for two years from the next day of his discharge i.e. 01.05.1996. The respondents are directed to grant disability element to the applicant @40% for two years which would stand rounded off to 50% for two years from the next day of his discharge i.e. 01.05.1996. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability

