

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 546 of 2019**Wednesday, this the 27th day of January, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

JC-420629A Ex Sub Brij Bhan Singh, Son of late Bachnu Singh,
Permanent Address – Sector –B, Adarsh Nagar, Nilmatha,
Lucknow- 226002, Present Address – As above.

..... Applicant

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

Versus

1. The Union of India, through the Secretary, Ministry of Defence New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters, MoD (Army), South Block, New Delhi -110011.
3. Officer in Charge, Defence Security Corps Records, Mill Road, Burnacherry Post, Kannur, Kerala – 670013.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad - 211014.

.....**Respondents**

Ld. Counsel for the : **Shri Anurag Mishra**,
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). *Issue/pass an order or direction directing the respondents to grant of disability pension to the applicant with effect from 01.11.2018 i.e. with effect from the date of discharge.*
- (ii). *Pass an order to quash the order dated 23.10.2018 passed by the respondents on account of denial of the disability pension.*
- (iii). *Issue/pass an order or direction to respondents to round off the disability pension upto 50%.*
- (iv). *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (v). *Cost of the appeal be awarded to the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in Defence Security Corps (DSC) on 26.10.2013 and was discharged on 31.10.2018 in Low Medical Category P2 (Permanent) under Rule 13 item I (i) after rendering 05 years and 06 days qualifying service. . At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Agra on 09.05.2018 assessed his disability ‘**PRIMARY HYPERTENSION I.10’ @ 30%** for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The

applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 23.10.2018. 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 DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Indian Air Force. The disease of the applicant was contracted 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 @ 30% for life has been regarded as NANA by the RMB, Reason- Onset of disability was in peace station and disability qualifying element for disability pension was NIL, hence applicant is not entitled disability pension in terms of Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the claim of the applicant for the grant of disability pension has correctly been rejected. 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. The questions which needs 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 '**PRIMARY HYPERTENSION, (I.10)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability occurred was in Peace location. 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. Peace Stations have their own pressures of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Air Force on 18.11.1997 and the disability has started in November 2016 after more than 19 years of Air Force service. 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 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."*

9. As such, in view of the decision of Hon'ble Supreme Court in the above case, we are of the considered view that benefit of rounding off of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from the date of discharge i.e. 01.12.2017.

10. In view of the above, the Original Application No. 214 of 2020 deserves to be allowed, hence **allowed**. The impugned orders dated 17.08.2018 and 28.11.2019 are set aside. The disability of the applicant is held as aggravated by Air Force Service. The

