

**Court No. 1 (E. Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 531 of 2021**Thursday, this the 13<sup>th</sup> day of January, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 15761044M Ex. Gnr. (ACP – II), Mukesh Kumar, Son of Late Hoti Lal, resident of Village –Nagla Kishan Singh, P.O. – Kharit, Tehsil – Jasrana, District – Firozabad (U.P.), Pincode – 283130.

**..... Applicant**Ld. Counsel for the Applicant : **Shri K.K. Singh Bisht**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Army Air Defence Records, PIN-906803, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

**.....Respondents**Ld. Counsel for the Respondents. : **Dr. Chet Narayan Singh**, Advocate  
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) *Issue/pass an order or direction to the respondents to summon and quash/set-aside the arbitrary and illegal order passed by Records, respondent No. 3 vide letter No. AAD/15761044M/DP-1177/Pen dated 26 June 2012 rejecting "disability element" is arbitrary, capricious and illegal and is liable to be quashed/set aside.*
- (b) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by the Appellate Committee on First Appeals (ACFA) vide letter No. B/40502/433/2016/AG/PS-4 (Imp-II) dated 15 May 2017 (Annexure No. A-1) rejecting the "disability element" claim of the applicant.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to grant 20% disability element of disability pension which after rounding off will be 50% for five years from the date of discharge i.e. 31 April 2012 and thereafter to conduct Re-Survey Medical Board (RSMB) to assess further disability of the applicant and grant disability element and the benefit of rounding off of disability element on the basis of assessment by the RSMB.*
- (d) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with cost.*

2. Briefly stated, applicant was enrolled in Indian Army on 10.04.1995 and was discharged on 31.04.2019 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military

Hospital, Jalandhar on 24.10.2011 assessed his disability '**MANIC EPISODE (F-30)**' @ 20% for five years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability pension was rejected vide letter dated 26.06.2012. The applicant preferred First Appeal which too was rejected vide letter dated 15.05.2017. 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 Indian 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 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. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, 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 i.e. '**MANIC EPISODE (F-30)**' has been regarded as 20% for five years by RMB. However,

since the disability was opined by RMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was not granted. He pleaded for dismissal of the O.A.

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 and we find that the questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his 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 '**MANIC EPISODE (F-30)**' to be neither attributable to nor aggravated (NANA) by military service as per AFMSF 15 dated 23 May 2003. The disability has been firstly detected on 25.11.2002 whereas the applicant was enrolled in the army on 10.04.1995 i.e. after about six years of military service. We are therefore of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should

be given to the applicant in view of the law settled on this matter by ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for five years from the next date of his discharge i.e. 31.04.2012.

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 10<sup>th</sup> 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 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 @ 20% for five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his discharge.

10. Since the applicant's RMB was valid for five years w.e.f. 31.04.2012, hence, the respondents will now have to conduct a fresh RSMB for him to decide his future eligibility to disability pension.

11. In view of the above, the **Original Application No. 531 of 2021** deserves to be allowed, hence, **allowed**. The impugned orders dated 26.06.2012 and 15.05.2017, 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. . The applicant is entitled to get disability element @20% for five years which would be rounded off to 50% for five years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for five years which would stand rounded off to 50% for five years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. Respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 13 January, 2022

AKD/-