

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 443 of 2022**Thursday, this the 05th day of January, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No.14620550-X, Ex. Hav. Abhiram Goldar R/o House No. 81/51 Harwara, Near Chauraha Dhoomangang, Prayagraj (U.P.) -211015.

..... ApplicantLd. Counsel for the Applicant : **Shri Amit Asthana**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No.101A, South Block, DHQ PO, New Delhi, Pin 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi.
3. Adjutant General’s Branch, IHQ of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Svenue, Church Road, New Delhi - 110001.
4. Officer in Charge Records, Records of EME, Sucunderabad PIN - 900453 C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

.....RespondentsLd. Counsel for the Respondents. : **Ms. Anju 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) *Impugned order dated 06.09.2021 be set aside passed by the respondents to the extent this order deny the grant of Disability Pension to the applicant as disability was neither attributable to nor aggravated by military service.*
- (b) *Direct Respondents to grant Disability Pension w.e.f. 29.02.2020 (date of discharge) @50% (after rounding off from 20% to 50%) as applicant's case is squarely covered on the matter of disease neither attributable to nor aggravated by military service by the Hon'ble Supreme Court in the case of Dharamvir Singh Vs Union of India & Ors (Civil Appeal No. 4949 of 2013 judgment dated 02.07.2013), Union of India Vs. Rajbir Singh (Civil Appeal no. 2904 of 2011 judgment on 13.02.2015 along with the 26 connected appeals), Union of India & Ors Vs, Angad Singh Titara (Civil Appeal no. 11208 of 2011 judgment on 24.02.2015) and latest Judgment Ex. Gnr. Laxmanram Poonia (Dead) Through Lrs. Vs Union of India and Ors. (Civil Appeal No. 2633 of 2017 judgment dated 22.02.2017) and on the matter of rounding of disability pension Hon'ble Supreme Court order dated 10.12.2014 in Civil Appeal No. 418/2012 titled union of India and Ors Vs. Ram Avtar.*
- (c) *Direct Respondents to grant arrears of Disability Pension wef 29.02.2020 (date of discharge) with 12% interest as applicant case squarely covered with this Hon'ble Tribunal in OA No. 1439/2016 title Ex Sgt. Girish Kumar Bs, UOI & Ors, order dated 01.12.2017 and Hon'ble Supreme Court in Civil Appeal No. 9946 of 2016 order dated 20.09.2016 titled Davinder Singh Vs. Union of India and Ors.*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 25.02.1994 and discharged on 29.02.2020 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (iii)(i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 176 Military Hospital on 28.01.2020 assessed his disability '**PRIMARY HYPERTENSION (ICD-I-10)**' @ 30% for life 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 vide letter dated 01.05.2020. The applicant preferred First Appeal which too was rejected vide letter dated 13.01.2021 which was communicated to the applicant vide letter dated 29.01.2021. The applicant preferred Second Appeal which was too rejected vide letter dated 06.09.2021 which was communicated to the applicant vide letter dated 21.09.2021. 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 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 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, hence as per Regulation 179 of Pension Regulations for the Army, 1961 (Part – I) and Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled to disability element of 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 element of 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 (ICD-I-10)**’ is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in October 2011 while posted in Peace location(Bhatinda Punjab), 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 not convincing and doesn't reflect the

complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 25.02.1994 and the disability has started after more than 16 years of Army service i.e. in October 2011. 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. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

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*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018, 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 next date of his discharge.

11. In view of the above, the **Original Application No. 443 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 Army Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his discharge. 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 the actual payment

12. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05 January, 2023
AKD/Ashok/-