

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 344 of 2024

Friday, this the 03rd day of January, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”

JC-704300L Ex. Sub. Prakash Chandra Kandpal, S/o Sri Harish Chandra Kandpal, R/o – Village – Kantali, P.O. – Kantali, District – Almora, Pin-263639 (Uttarakhand).

..... Applicant

Ld. Counsel for the : **Shri K.P. Datta**, Advocate
 Applicant

Versus

1. Union of India, through its Secretary, Integrated HQs of MoD (Army), New Delhi-110011.
2. The Additional Directorate Gen of Personnel Services, PS-8, AG’s branch, Integrated HQ of MoD (Army), Room No. 527, 5th Floor, ‘A’ Block, Defence Office Complex, KG Marg, New Delhi-110001.
3. The Officer in Charge, Records AMC, Lucknow, Pin-226002 (UP).
4. The PCDA (P), Draupadi Ghat, Allahabad, Pin-211014 (UP).

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
 Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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 issue/pass an order to set-aside/quash IHQ of MoD (Army) rejection order letter No.B/40502/1604/2023/AG/PS-8 dated 30 Jan 2024, received vide AMC Records letter No. JC-704300L/Pen/DP/1st Appeal dated 12 Feb 2024.*
- B. *To issue/pass an order to grant composite disability element @61.75% with benefit of Rounding off to 75% in light of Judgment of Hon’ble Apex Court and Orders of Hon’ble Armed Forces Tribunal in similar cases from next date of discharge wef 01.09.2023.*
- C. *To issue/pass an order to grant arrears of disability element along with interest @18% p.a. on arrears from next date of discharge wef 01.09.2023.*
- D. *To any other order as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 31.08.1995 and discharged on 31.08.2023 in Low Medical Category on fulfilling the conditions of his enrolment after rendering 28 years and 01 day of service under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. The applicant is in receipt of Service Pension. Before discharge from service, the Release Medical Board (RMB) held at Base Hospital, Delhi Cantt.

on 29.04.2023 assessed his disabilities (i) '**PERIPHERAL NERVES AND AUTONOMIC NERVOUS SYSTEM (D36.1) BENIGN NEOPLASM OF OTHER AND UNSPECIFIED SITE (D36)**' @50% for life (ii) '**CRANIAL NERVES (D33.3) BENIGN NEOPLASM OF BRAIN AND OTHER PARTS OF CENTRAL NERVOUS SYSTEM (D33)**' @10% for life and (iii) '**MIXED CONDUCTIVE AND SENSORINURAL HEARING LOSS, UNILATERAL (H90.7)**' @15% for life, **composite disabilities @61.75% for life** and opined the first and second disabilities to be neither attributable to nor aggravated (NANA) by service and third disability to be **attributable to service**. The applicant's claim for grant of disability pension was rejected vide letter dated 02.09.2023. The applicant preferred First Appeal dated 29.09.2023 which too was rejected vide letter dated 30.01.2024 which was communicated to the applicant vide letter dated 12.02.2024. 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. Although, the third disability has been regarded as attributable to service by the RMB but it's degree of disability has wrongly been assessed @15%. The first and second diseases of

the applicant were contracted during the service, hence they are also 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 element of disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that first and second disabilities of the applicant @50% for life and @10% for life respectively have been regarded as NANA by the RMB and although the third disability of the applicant has been regarded as attributable to service by the RMB but it's degree of disability has been assessed @15% for life which is less than @20%, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more*" the applicant is not entitled to disability element of disability pension. He further submitted that Para 5 of Entitlement Rules for Casualty Pensionary Awards in Armed Forces Personnel, 2008 stipulates that "*The*

medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.” He further contended that Para 23 of Chapter VI of Guide to Medical Officers (Military Pension), 2008 stipulates that *“Medical opinion would hold that nerve deafness could be due to service only when it is as a result of an attributable service injury or outcome of infection contracted during service”*. Ld. Counsel for the respondents further contended that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. 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 two folds:-

- (a) Whether the first and second disabilities of the applicant are 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 first and second disabilities '**PERIPHERAL NERVES AND AUTONOMIC NERVOUS SYSTEM (D36.1) BENIGN NEOPLASM OF OTHER AND UNSPECIFIED SITE (D36)**' and '**CRANIAL NERVES (D33.3) BENIGN NEOPLASM OF BRAIN AND OTHER PARTS OF CENTRAL NERVOUS SYSTEM (D33)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of these disabilities in August 2022 while serving in Base Hospital, Delhi Cantt and disabilities are benign tumor of schwannoma cells which are associated with genetic mutation and polymorphism and disabilities are not related to service condition, therefore, applicant is not entitled to disability element of 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 element

of disability pension to applicant are cryptic, not convincing and doesn't reflect the complete truth on the matter. Even 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 31.08.1995 and the first and second disabilities have started after more than 24 years of Army service i.e. in August, 2020. 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 first and second disabilities 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/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 (supra)*** as well as Government of India, Ministry of Defence letter No.17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @61.75% for life to be rounded off to 75% 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. 344 of 2024** 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 first and second disabilities of the applicant are held as aggravated by Army Service. Be it mentioned that the third disability of the applicant has already been regarded as attributable by the RMB. The applicant is entitled to get disability element @61.75% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @61.75% for life which would stand rounded off to 75% 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.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 03 January, 2025

AKD/-