

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 414 of 2024

Friday, this the 17th day of January, 2025

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

No. 2887471P, Sep. Swami Nath Pandey,
S/o Shiv Nandan Pandey,
R/o Village – Gaighat,
Post Office – Baghouch (Haldi), District – Ballia,
Uttar Pradesh – 277402.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi -110010.
2. Chief of the Army Staff, IHQ Ministry of defence (Army), South Block, New Delhi.
3. Officer –in-Charge, Raksha Suraksha Corps Abhilekh, Defence Security Corps Records, Mill Road, Burnacherry – Post-Kannur, Kerala -670013.
4. Principle Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Adesh Kumar Gupta**, 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 the letter /order rejection of disability pension after summoning the original copy of same.*
- B. *To issue/pass an order or directions to the respondents to grant disability pension at the rate of percentage as assessed in his Release Medical Board Proceedings after summoning the original copy of same from date of discharge 30.11.2019 (Date of SOS – 01.12.2019) along with interest @12% on arrear in light of Hon'ble Apex Court.*
- C. *To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension from date of discharge 30.11.2019 (Date of SOS -01.12.2019) along with interest @12% on arrear in light of Hon'ble Apex Court.*
- D. *To issue /pass any other order or direction as this Hon'ble Tribunal may just, fit and proper under the circumstances of the case in favour of the applicant.*
- E. *To allow this original application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 20.07.1989 and discharged on 31.07.2011 (AN) under Rule 13 (3) Item III (i) of the Army Rules, 1954 after rendering more than 21 years of service and is in receipt of service pension. Thereafter, the applicant was re-enrolled in the Defence Security Service (DSC) on 03.04.2012 and discharged from service on 30.11.2019 under Rule 13 (3) Item III (iii)(a)(i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital Kamptee on 26.11.2019 assessed his disability **'PRIMARY HYPERTENSION (ICD -I10)' @ 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 07.03.2020. The applicant preferred First Appeal dated 25.03.2023 but of no avail. 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 re-enrolment in DSC. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh vs. Union of India & Ors**, (2013), 7 SCC, 316 and **Sukhwinder Singh vs. Union of India** (Civil Appeal No. 5605 of 2010), decided on 25.06.2014 and 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. Since, case for grant of service element of disability pension (Service Element + Disability Element) to DSC personnel is pending decision before the Larger Bench of AFT (PB) New Delhi, learned counsel for the applicant, during the course of final argument, submitted that he is not pressing for service element

at this stage and applicant be granted disability element of disability pension alongwith its rounding off benefit from the next date of discharge from service.

5. On the other hand, Ld. Counsel for the respondents contended that applicant has been discharged from service after rendering 07 years, 07 months and 28 days of service in low medical category due to disability “**Primary Hypertension**” which was assessed @ 30% for life as neither attributable to nor aggravated by military service (NANA) and disability qualifying for disability pension as NIL percentage. Hence as per Regulation 58 & 81 (a) of the Pension Regulations for the Army, 2008 (Part-I) and para 43, Chapter VI of GMO 2008, the applicant is not entitled for disability pension and benefit of its rounding off. He pleaded for dismissal of the Original Application.

6. 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 disability pension or disability element only and its benefit of rounding off?

7. 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)."

8. 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 – I10)**' is neither attributable to nor aggravated (NANA) by service and onset of disability in Sep 2013 while posted in Peace location (Jaisalmer), 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 20.07.1989 and discharged from service on 31.07.2011 and re-enrolled in the DSC on 03.04.2012 and discharged from service on 30.11.2019 and the disability has started after joining DSC service in Sep. 2013. 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.

9. 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."

10. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. Since, matter for grant of disability pension including service element is pending before the Larger Bench and applicant has pressed for grant of disability element only, as such, in view of the decision of Hon'ble Supreme Court in the cases of **Ram Avtar** (supra) and **Shiv Dass** (supra), we are of the considered view that benefit of rounding off of disability element of disability pension @ 30% for life, rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

12. In view of the above, the **Original Application No. 414 of 2024** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is 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 w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 15.04.2024. 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.

13. No order as to costs.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 17 January, 2025

Ashok/RB