

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 456 of 2024

Tuesday, this the 21st day of January, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

Sub. Sushil Kumar Singh (Retd.) (Service No. JC-761901P),
Village – Pahrajpur, PO – Pur, Tehsil – Sikandarpur, District –
Ballia, Uttar Pradesh-277124.

..... Applicant

Ld. Counsel for the Applicant : **Shri Dhiraj Kumar**, Advocate
Shri Tatsat Shukla, Advocate
Shri Rahul Pal, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence,
Room No. 101 A, South Block, DHQ PO, New Delhi, Pin-
110011.
2. OIC Records, EME Records, Secunderabad.
3. The PCDA (P), Allahabad, Uttar Pradesh, Pin-211012.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Adesh Kumar Gupta**, Advocate
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 quash the impugned order annexed as Annexure A-1.*
- (b) *To direct the respondents to grant the disability pension @46.8%, with benefit of broad-banded to 50% along with arrears & interest @10% p.a. from the date of discharge, by treating disease as attributable to and aggravated by military service with all consequential benefits, in view of the Hon’ble Apex Court Judgment in Rajbir Singh (Supra) and Dharamvir Singh (Supra), or*
- (c) *To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 26.06.1992 and discharged on 30.06.2020 in Low Medical Category on fulfilling the conditions of his enrolment 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 Hisar on 23.12.2019 assessed his disabilities (i) **‘COMPLETE ACL TEAR WITH TEAR LATERAL MENISCUS ANTERIOR HORN (LT) KNEE (S 83.2)’** @20% for life as **attributable to service**, however, the degree of

disability has been reduced to @10% for life due to unwilling to surgery, (ii) '**OVER WEIGHT (E-66)**' @5% as neither attributable to nor aggravated (NANA) by service and (iii) '**PRIMARY HYPERTENSION**' @30% for life as NANA, **composite disabilities @46.8% for life**. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 17.04.2020. The applicant preferred First Appeal dated 24.09.2023 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 the applicant's disability has been assessed @20% as attributable to service which has been reduced to 10% by the RMB due to unwillingness for surgery. The degree of disablement of cannot be reduced on the ground of unwillingness certificate given for surgery by the applicant. He further submitted 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 second and third disabilities of the applicant were contracted during the service, hence they are 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 although the first disability of the applicant @20% for life has been regarded as attributable to service due to injury but it's degree of disability has been reduced by the RMB as @10% for life due to unwilling to surgery given by the applicant and the second and third disabilities of the applicant @5% for life and @30% for life respectively have been regarded as NANA by the RMB, 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 pension. Ld. Counsel for the respondents further submitted that the medical board is an expert body and its opinion is to be given due weightage, value and credence. The medical of large number of persons is carried out by a single Medical Officer who is also not expert in all fields and it is not feasible for the Recruiting Medical Officer to endorse any remarks with regards to any idiopathic disorder in the Medical form at the time of enrolment of such person as such disability may erupt any time during life of an

individual which may not have any relation with stress and strain of military service and the only specialized medical authority can decide the cause of eruption of such disease. In the instant case the Recruiting Medical Officer did not endorse any remarks at the time of his enrolment. He further contended that the applicant's First Appeal dated 24.09.2023 was processed to the competent authority for examination/decision vide EME Records letter dated 20.10.2023, however, the same was returned due to some observation vide letter dated 19.01.2024. The same was re-submitted to the competent authority along with all supporting documents duly rectified the observation for examination/decision vide EME Records letter dated 10.02.2024. However, decision of the competent authority has not yet been received till date. 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 three folds:-

- (a) Whether the RMB can reduce the degree of disablement on the ground of unwilling for surgery?
- (b) Whether the second and third disabilities of the applicant are attributable to or aggravated by Military Service?

- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. In the instant case the first disability has been assessed @20% for life by the RMB. At page 8 of the RMB proceedings, in the columns of "*Percentage of disablement with duration*" the RMB endorsed that "*20% (Twenty Percent) for life*" whereas in the columns "*Disability Qualification for Disability Pension with duration*" and "*Net Assessment Qualifying for Disability Pension (Max 100% with duration*" the RMB endorsed as "*10% (Ten Percent) for life*". It was done due to unwilling certificate given by the applicant for surgery. We also observed that at page 8 of the RMB proceedings in para 2(e) in reply to the question "*Does the Medical Board consider it probable that the operation/treatment would have cured the disease/disability or reduced as percentage?*" the RMB endorsed as "**YES**" but in para 2(f) in reply to question "*If the reply to (e) is in affirmative, what is the probable percentage to which the disease/disablement could be reduced by operation/treatment?*" the RMB endorsed as "**50% fifty percent**". It shows that by the operation/treatment there is possibility of curing the first disease is only 50%. We are, therefore, of the opinion that the degree of disablement cannot be reduced by the RMB on the ground of unwilling for surgery by the applicant. Accordingly, we hold that the assessment degree of first disability is @20% for life.

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 third disability '**PRIMARY HYPERTENSION**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability on 23.05.2018 while posted in Peace location (Hisar), therefore, applicant is not entitled to disability element of disability pension for the third disability. 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 for the third disability is cryptic, 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 26.06.1992 and the third disability has started after more than 25 years of Army service i.e. on 23.05.2018. 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 third disability i.e. '**PRIMARY HYPERTENSION**' of the applicant should be considered as aggravated by military service.

9. However, with regard to second disability i.e. '**OVER WEIGHT**' we are agree with the opinion of the RMB as NANA as it is a metabolic disorder due to excess intake of saturated fat in diet and not related to service conditions.

10. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

11. In the instant case there are functional effects of the first and third disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first disability is @20% and third disability is @30% for which we are of the view that there is some overlapping. The degree of

second disability is @5% for life which has been held as NANA by us and the composite assessment of all the disabilities is @46.8% for life. Accordingly, we hold that composite assessment of first and third disabilities is less than @46.8% for life.

12. 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 invalidated 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."*

13. 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.

14. 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.”

15. As such, in view of the decision of Hon’ble Supreme Court in the cases of ***Union of India and Ors vs Ram Avtar & ors (supra)*** and ***Shiv Dass (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 less than @46.8% for life to be 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.

16. In view of the above, the **Original Application No. 456 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 applicant’s first disability is held @20% for life. The second disability is held as NANA as has been opined by the RMB. The third disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element less than @46.8% 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 less than 46.8% 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 29.04.2024. 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.

17. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 21 January, 2025

AKD/-