

**Court No. 1**  
**Reserved Judgment**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
ORIGINAL APPLICATION NO. 486 of 2017**

Friday, this the 27<sup>th</sup> day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 4552219L Ex L/Naik Chhathu Pandey, S/O Late Sri Achhebar pandey, R/O Vill Nandpur, PO Haldi, Distt-Ballia (UP).

**....Applicant**

Ld. Counsel for the Applicant : **Shri KK Mishra,  
Advocate.**

Verses

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Records, Defence Security Corps, Records PIN-901277, C/O 56 APO.
4. PCDA (Pension) Allahabad.

**.....Respondents**

Ld. Counsel for the Respondents : **Shri RC Shukla  
Advocate, Sr. Central  
Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

**ORDER**

**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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 Defence Security Corps, Records letter No Pen/DP-4/4552219L/Vol-77 dt 02 Nov 2010, Addl Dte Gen Personnel Service, AG’s Branch, Army HQ, New Delhi letter No B/40502/103/11/AG/PS-4 (Imp-II) dt 08 Jul 2011 and letter No B/38046A/223/2012/AG/PS-4 (2<sup>nd</sup> Appeal) dt 06 Dec 2013, as contained in Annexure A-3, A-4 and A-5 respectively to the O.A.*

*(b) to direct the respondents to declare applicants disability as Attributed to Military Service and grant 20 percent disability pension to the applicant w.e.f. 01 Oct 2010, i.e. from the date he was discharged from service.*

*(c) therefore, direct the respondents to round of this percentage of disability pension to 50%, as per the policy on the subject and pay the arrears of pension from the date it was entitled to him with interest as applicable.*

*(d) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*

*(e) Cost of the application be awarded to the applicant.*

2. The facts draped in brevity are that the Applicant was enrolled in the Indian Army on 14.12.1980 in Mahar Regt where he served for a period of 17 years and on completion of his terms of engagement, he was discharged from service on 31.12.1997 in medical category SHAPE-I. Subsequent to

his superannuation from the Army, the applicant was re-enrolled in Defence Security Corps (DSC) on 02.09.2000 in medical category SHAPE-I. As per terms of engagement in DSC, initially, the applicant was employed for a period of ten years, which was extendable for another five years subject to fulfillment of required criteria for extension. One of the essential criteria for the extension was that the applicant is to be found in medical category SHAPE-I at the stage of seeking extension. During the year 2009, the applicant while serving with 7 N Detachment, Ramnandpuram (TN) encountered some health problem and he was admitted to Command Hospital (Air Force), Bangalore where on examination he was found to be suffering from **(i) Primary Hypertension, (ii) Diabetes Mellitus Type II and (iii) Seizure.** The applicant was placed in medical category P-2 (T-24). Since the applicant's initial terms of engagement was to expire on 01.10.2010, he applied for extension for another five years in the month of Jun 2010. The Medical Board was held at Military Hospital, Chennai where on examination, the Applicant was placed in medical category P-2 (permanent). The disability of the Applicant was assessed as 30% as against PRIMARY HYPERTENSION, 20% as against DIABETIES MELLITUS TYPE ii AND 20% as against SEIZURES. The composite disability was assessed as 50% for life. The Medical Board recommended the applicant for discharge from

the service on account of being in low medical category. Accordingly, the applicant was discharged from service on 30.09.2010. The disability of the Applicant was opined to be neither attributable to nor aggravated by military service by the Release Medical Board. The Applicant's case for disability pension was processed but the same was disallowed vide communication dated 02.11.2010. Aggrieved, the Applicant preferred first appeal which was rejected vide communication dated 08.07.2011. Then the applicant preferred second appeal which was also turned down vide communication dated 06.12.2011. It is in this backdrop that the present O.A has been filed by the applicant for the reliefs aforesaid.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also perused the relevant materials on record.

4. The only ground put forth by the respondents for denial of disability pension is that since the applicant had been discharged on completion of terms of engagement and further since his disability had been opined to be neither attributable to nor aggravated by military service, he was not found to be entitled to disability pension. It is pointed out that as per existing policy the individual who is invalided out from service on account of a disability which is attributable to or aggravated by such service is only entitled to disability

pension consisting of service element and disability element. No other arguments have been pressed into service except the above. It has also been noticed that respondents haven't annexed a copy of Release Medical Board in their counter, though response to applicants first appeal has been placed.

5. The law on attributability of a disability has already been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India and Ors** 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)."*

6. The above judgment has been constantly followed and further explored by the Supreme Court in **Union of India and others v. Rajbir Singh (CA No. 2904 of 2011 decided on 13.2.2015); Union of India and others v. Manjit Singh (CA No. 4357-58 of 2015 (arising out of SLP ( C) No. 13732-33 of 2015) decided on 12.5.2015; Union of India v. Angad Singh (CA No. 2208 of 2011 decided on 24.2.2015); KJS Butter v. Union of India (CA No. 5591 of 2006 decided on 31.3.2011; Ex. Hav Mani Ram Bharia v. Union of India and others, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; Satwinder Singh v. Union of India OA 621 of 2014 Bharat Kumar Vs UOI & Ors.; OA 1235 of 2014 Hoshiar**

**Singh Vs UOI & Ors. and 480 of 2015 Jasbir Singh Vs UOI & Ors. 18 and others Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011) and decided on 11.2.2016.** Thus in light of the well settled law on attributability the disability of the applicant is to be considered as attributable to military service.

7. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar*** and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

8. In ***Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014***) in which Hon'ble the Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability.

The relevant portion of the decision being relevant 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.*

*Xxx*

*xxx*

*xxx*

*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 a result of foregoing discussions, the O.A is allowed. The impugned orders as contained in Annexures A-3, A-4 and A-5 are set aside. The disability of the Applicant is held to be attributable to and aggravated by military service and he is held entitled to disability pension with effect from 03 years prior to filing his O.A. This date of filing O.A is 09.03.2017. The disability of the Applicant which was initially assessed as 50% for life is rounded off to 75% for life. The Applicant shall be paid arrears of disability pension within four months of receiving a certified copy of this order. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid.



10. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: April, 27 , 2018  
MH/-