

**RESERVED**  
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**ORIGINAL APPLICATION No. 438 of 2018**

Friday, this the 03<sup>rd</sup> day of May, 2019

**“Hon’ble Mr. Justice V.K. Shali, Member (J)**  
**Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

Ex. Nk. No. 4191354 F Ex. Nk. Ashok Chandra S/o Pran Dutt  
Joshi R/o Village Pakaria, Post Office Khatima, Tehsil Khatima,  
District Udham Singh Nagar, Uttarakhand-262308.

**..... Applicant**

Ld. Counsel for the : **Shri Kishore Rai**, Advocate.  
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,  
South Block, New Delhi-110001.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Senior Record Officer, Kumaun Regiment, Ranikhet.

**.....Respondents**

Ld. Counsel for the : **Ms. Pushpa Bhatt**,  
Respondents. Senior Central Govt. Counsel

**ORDER**

**“Per Hon’ble Air Marshal B.B.P. 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.

- i. A direction to quash the order dated 18.06.2016 passed by respondent no. (contained as Annexure No. 3 to the original application) or to*
- ii. A direction to grant the disability pension to the applicant from the date of his retirement i.e. 31.03.2018 along with rounding to the tune of 50%.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 27.10.1997 and was discharged in the rank of Naik on 31.03.2018 in Low Medical Category at his own request. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Ranikhet on 31.03.2018 assessed his disabilities **“(1) FRACTURE DISTAL RADIUS (RT) (S52.5) @20% for life, (2) FRACTURE CLAVICLE RT (S42.0) @20% FOR LIFE (iii) BILATERAL SENSORI NEURAL HEARING LOSS (H90.3) @20% for life”** composite @ 50% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service as the disabilities have been

occurred during the leave period of the applicant by falling at his Home. The applicant approached the respondents for grant of disability pension and its rounding off which was rejected by the respondents vide letter dated 18.06.2018. 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 as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @50% for life have been regarded as NANA by the RMB, hence applicant is not entitled to 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. The questions which needs to be answered are of two fold :-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his 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 disabilities **“(1) FRACTURE DISTAL RADIUS (RT) (S52.5) @20% for life, (2) FRACTURE CLAVICLE RT (S42.0) @20% FOR LIFE (iii) BILATERAL SENSORI NEURAL HEARING LOSS (H90.3) @20% for life”** are neither attributable to nor aggravated (NANA) by service as the disabilities have been occurred during the leave period of the applicant by falling at his Home. This reasoning of RMB is not convincing and doesn't reflect

the complete truth on this matter. The applicant was enrolled in Indian Army on 27.10.1997 and the disabilities have started after more than 20 years of Army service i.e. in the year 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 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 10<sup>th</sup> 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. 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)***, we are of the considered view that benefit of rounding off of disability pension @50% for life to be rounded off to 75% for life may be extended to the applicant from the date of discharge of the applicant i.e. 31.03.2018.

10. In view of the above, the **Original Application No. 438 of 2018** deserves to be allowed, hence **allowed**. The impugned order dated 18.06.2018, enclosed at page 44 of the Original Application, is set aside. The disabilities of the applicant **"(1) FRACTURE DISTAL RADIUS (RT) (S52.5), (2) FRACTURE CLAVICLE RT**

**(S42.0) (iii) BILATERAL SENSORI NEURAL HEARING LOSS**

**(H90.3)**” are to be considered as aggravated by military service.

The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 75% for life with effect from the date of discharge of the applicant i.e. 31.03.2018. The respondents are 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 @ 9% per annum till actual payment.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice V.K. Shali)**  
**Member (J)**

Dated: 03 May, 2019

GSR/-