

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 215 of 2021**Tuesday, this the 23rd day of November, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 14603064K Ex. Sep. (GD) Shivendra Kumar Singh, Son of Late Sarju, resident of Chak Heeranand, Vkas road, Naini, Prayagraj (UP)-211008.

..... ApplicantLd. Counsel for the : **Shri D.S. Tiwari**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, Room No. 101 A, South Block, DHQ PO, New Delhi, PIN-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), Room No. 195, South Block, DHQ PO, New Delhi, PIN-110011.
3. Officer-in-Charge, The Records DSC, PIN (Army)-900453, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP)-211014.

.....RespondentsLd. Counsel for the : **Shri Rajeev Narayan Pandey**, Advocate
Respondents. Central Govt. Counsel**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (I) *The Hon'ble Tribunal may be pleased to quash the impugned order dated 30 Jan, 2021 and direct the respondents to grant disability pension with effect from the date of discharge i.e. 01.12.2019 along with Broad Banding to 50% with its arrears and interest thereon at the rate of 18% per annum with a direction to respondents that the disability claim may not be connected with excess payment of gratuity payment without giving any details and an opportunity to the applicant.*
- (II) *Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation may please be passed.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 29.01.1987 and was discharged on 31.01.2013 under Rule 13 (3) Item III (i) of the Army Rules, 1954. The applicant was re-enrolled in Defence Security Corps (DSC) on 19.07.2013 and 30.11.2019 in Low Medical Category under Rule 13 (3) Item III (iii) (a) (i) of Army Rules, 1954. At the time of discharge from DSC service, the Release Medical Board (RMB) held at Military Hospital, Pune on 21.11.2019 assessed his disabilities (i) **'CORONARY ARTERY DISEASE NON CRITICAL WITH NORMAL LV FUNCTION (I 25.11)'** @ 40% for life as **attributable to service**, (ii) **'IMPAIRED FASTING CLUCOSE (R 73.0)'** @15-19% for life as neither attributable to nor aggravated (NANA) by service and (iii) **'OBESITY (E-66.0)'** @1-5% for life as NANA by service and **composite disabilities @40% for life**. The

applicant was paid Rs.2,80,800/- as Service Gratuity and Retirement Gratuity. The applicant claim for grant of disability pension was returned to the applicant with direction to deposit Rs.2,80,800/- for further processing vide letter dated 30.01.2021 on the basis of letters dated 01.10.2020 and 21.12.2020 issued by PCDA (P), Allahabad and PAO (OR) DSC, Kannur respectively. 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 DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army or DSC. The diseases of the applicant were contacted during the service, hence they are attributable to and aggravated by Military/DSC 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 applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents conceded that applicant's first disability @40% for life was opined by the RMB as **attributable to service** as such applicant is entitled for disability pension consisting of Service Element and Disability Element for this disability. He submitted that applicant has been

approached vide DSC letter dated 30.01.201 to deposit the amount of Service Gratuity of Rs.2,80,800/-, paid to him, for re-processing the Disability Pension claim. However, he contended that second and third disabilities of the applicant have been regarded as NANA by the RMB, hence applicant is not entitled to disability pension for these disabilities. 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 of two folds:-

- (a) Whether the second and third disabilities of the applicant are also attributable to or aggravated by DSC Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. The applicant's first disability i.e. **CORONARY ARTERY DISEASE NON CRITICAL WITH NORMAL LV FUNCTION (I 25.11)' @40%** has already been opined by the RMB as **attributable to service**. The respondents have also conceded in their Counter Affidavit that applicant is entitled for disability pension.

7. With regard to second and third disabilities i.e. **'IMPAIRED FASTING CLUCOSE (R 73.0)'** and **'OBESITY (E 66.0)'** we are agree with the opinion of RMB as NANA as they are life style disorder.

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. 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 @40% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge. However, Service Gratuity and Retirement Gratuity amounting to Rs.2,80,000/- paid to applicant shall be adjusted from the arrears of disability pension.

10. In view of the above, the **Original Application No. 215 of 2021** deserves to be partly allowed, hence **partly allowed**. The impugned orders rejecting/returning the applicant's claim for grant of disability pension, is set aside. The first disability has already been opined by the RMB as attributable to service. The applicant is entitled to get disability pension @40% for life which would be rounded off to 50% for life from the next date of his discharge. The

respondents are directed to grant disability pension to the applicant @40% for life which would stand rounded off to 50% for life from the next date of his discharge. The Service Gratuity and Retirement Gratuity amounting to Rs.2,80,000/- paid to applicant shall be adjusted from the arrears of disability pension. 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

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 23 November, 2021

AKD/-