

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 387 of 2020**Thursday, this the 16<sup>th</sup> day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Hav Bir Bahadur Singh, S/o Late Sri Daphadar, Village- Bijauree,  
Post – Bhalaul, Thana- Jaithra, Etah

..... Applicant

Ld. Counsel for the : **Col AK Srivastava (Retd), Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi – 110011.
3. OIC Records, Army Air Defence (AAD) Gopalpur (Odissa).
4. PCDA (P), Draupadighat, Allahabad (U.P.) – 211014

..... Respondents

Ld. Counsel for the : **Dr Gyan Singh,**  
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.

*(a). Issue/ pass an order or direction of appropriate nature to quash/ set aside respondent’s remarks in Part V of his RMB proceedings that applicant’s disabilities due to 30% disability due to Medial Condyle (LT) Femur and Patalla (LT) (OPTD) and 40% disability due to PARONOID SCHIZOPHRENIA was neither attributable to nor aggravated by military service and thereby denying his 75% disability element of pension after due rounding off his 70% composite disability w.e.f. 01.01.2014.*

*(b). Issue/ pass an order or direction of appropriate nature to summon and quash/set aside respondent’s impugned letters/orders, not communicated to him and have led to denial of his 75% disability element of pension after due rounding off his 70% composite disability w.e.f. 01.01.2014.*

*(c). Issue/ pass an order or direction to the respondents to consider applicant’s disabilities due to 30% disability due to Medical Condyle (LT) Femur and Patalla (LT) (OPTD) and 40% disability due to PARONOID SCHIZOPHRENIA as attributable to and/ or aggravated by military service and thereby sanction his 75% disability element of pension after due rounding off his 70% composite disability w.e.f. 01.01.2014.*

*(d) Issue/ pass an order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

*(e) Issue/ pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

*(f) Allow the application with costs.*

2. Supplementary counter affidavit filed by learned counsel for the respondents is taken on record.

3. Facts giving rise to Original Application in brief are that applicant was enrolled in Indian Army on 01.01.1990. Applicant while posted in 58 RR (J&K), CP Ops in Field area was granted 26 days Part of Annual Leave during Jan 2010. On 29.01.2010 applicant met with an accident and sustained injury. He was treated in Military Hospital and granted sick leave. The applicant was placed in low medical category A3 (Permanent) for the disabilities **Medial Condyle (LT) Femure** and **Patala (LT) (OPTD)**. A Court of Inquiry was held and disability of the applicant was considered as neither attributable to nor aggravated by military service. At the time of retirement, Release Medical Board (RMB) of the applicant was held and applicant was diagnosed disabilities **Medial Condyle (LT) Femure** and **Patala (LT) (OPTD) @ 30%** and **PARANIOD SCHIZOPHRENIA @ 40%**. The applicant was discharged from service on 01.01.2014. His disabilities were assessed as 70% for life and disability qualifying for disability pension with duration was assessed as 'Nil for Life' and disabilities were considered neither attributable to nor aggravated by army service. Claim for grant of disability pension was denied to applicant vide respondents letter dated 25.02.2014 on the reason that his disability was neither

attributable to nor aggravated by military service. His First Appeal for grant of disability pension was also rejected by the respondents vide letter dated 05.10.2020, hence this O.A.

4. 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. At the time of retirement, Release Medical Board (RMB) of the applicant was held and applicant was diagnosed disabilities **Medial Condyle (LT) Femure** and **Patala (LT) (OPTD) @ 30%** and **PARANIOD SCHIZOPHRENIA @ 40%** and all disabilities were assessed @ 70% for life. The applicant met with an accident while going to Etah Railway Station to get his return journey reservation ticket. In Military Hospital, Agra, he was detected to sustain injury **Medial Condyle (LT) Femure** and **Patala (LT) (OPTD)**. Learned counsel for the applicant pleaded that since the applicant sustained injury while on casual leave, his disability should be considered as attributable to and aggravated by military service. Further, disability **PARANIOD SCHIZOPHRENIA** was first diagnosed in the year Dec 2012, after about 21 years of joining 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%.

5. On the other hand, Ld. Counsel for the respondents contended that applicant has rendered about 24 years of service and he is in receipt of service pension. It is not disputed that when applicant sustained injury **Medial Condyle (LT) Femure** and **Patala (LT) (OPTD)** was on part of annual leave but being on leave could not be treated as on duty unless there is some causal connection between the injury and military duty. After accident of the applicant a court of inquiry was held and it was opined that injury was neither attributable to nor aggravated by military service. Release Medical Board opined the injury as neither attributable to nor aggravated by military service. He further submitted that unless injury sustained has causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on duty or disability was not reported/detected while being enrolled or commissioned. He further submitted that in the given facts, applicant being on leave there was no causal connection between the injury sustained and military service. He further submitted that disability **PARANIOD SCHIZOPHRENIA** has also been regarded as NANA and disability qualifying element for disability pension was assessed as NIL. After sustaining injury, applicant was granted sheltered appointment to complete his terms of engagement. Since, the applicant was not fulfilling the primary conditions for grant of

disability pension as laid down in Para 173 of Pension Regulations for the Army, 1961 (Part –I), which clearly states that pension may be granted to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more. He further submitted that disability pension of the applicant has correctly been rejected as per laid down policy.

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. The questions which needs 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 benefit of rounding off the disability pension?

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 injury **Medial Condyle (LT) Femure** and **Patala (LT) (OPTD)** sustained by the applicant while on leave was not attributable to military service as opined by the court of inquiry as well as by RMB. Moreover, the applicant has not given any evidence to proof that he went to take train reservation ticket, hence applicant is not entitled disability element for this injury. As far as disability **PARANIOD SCHIZOPHRENIA** is concerned, it was first time reported after about 22 years of military service, and no specific reason has been given by RMB for declaring it as NANA, therefore, we are of the opinion that denying disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. Peace and Field both Stations have their own pressures of rigorous army service and associated stress and strain of army service. The applicant was enrolled in Indian Army on 01.01.1990 and the disability **PARANIOD SCHIZOPHRENIA** started in the year 2012 after more than 22 years of army service. 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 army 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 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 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.”*

10. As such, in view of the decision of Hon'ble Supreme Court in the above case, we are of the considered view that benefit of rounding off of disability element for **PARANIOD SCHIZOPHRENIA**

@ 40% to be rounded off to 50% for life may be extended to the applicant from three years prior to filing of O.A.

11. In view of the above, the Original Application deserves to be partly allowed, hence partly **allowed**. The impugned orders rejecting claim of disability pension are set aside. The disability **PARANIOD SCHIZOPHRENIA** of the applicant is held as aggravated by army service. The respondents are directed to grant disability element to the applicant @ 40% for life which would be rounded off to 50% from three years prior to filing of O.A. The O.A. was filed on 15.10.2020. 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 @ 8% per annum till actual payment.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)  
**Member (A)**

(Justice Umesh Chandra Srivastava)  
**Member (J)**

Dated : 16 September, 2021  
Ukt/-