

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 172 of 2020**Monday, this the 27th day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 15431698H Ex. Naik Saroj Kumar Mishra, Son of Late babu Ram Mishra, Resident of Village : Bhartha Dashrath Pur, Post Bikapur, Disrict Ayodhya.

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate.
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence, New Delhi-110011.
2. Second Appellate Committee on Pension (SACP), Additional Director General of Personnel Services, Adjutant Generals branch/PS-4 (Imp-II), Integrated Headquarters of M o D (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110011.
3. Commandant cum Chief Records Officer, Army Medical Corps Centre and College, Lucknow.

.....**Respondents**Ld. Counsel for the : **Ms. Anju Singh**, 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 :-

- (a) *To direct the respondents to dispose of the statutory final appeal of the Applicant dated 15.11.2019 by a reasoned order (speaking for itself) within a time frame to be fixed by this Hon'ble Tribunal preferably two months.*
- (b) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (c) *Award cost of petition.*
- (d) *To quash the rejection order passed by Adjutant General Branch, IHQ of MoD (Army), M Block, Room No. 100, Brassey Avenue, Church Road, New Delhi-110001 letter bearing No. B/380469/141/2020/AG/PS-4 (2nd Appeal) dated 26.11.2020 with all the consequential benefits to the applicant.*
- (e) *To quash the rejection order of Additional Director General of Personnel Services, Adjutant General's Branch, IHQ of MoD (Army), PIN 900256 C/o 56 APO bearing No. B/40502/32/2019/AG/PS-2 (Imp-II) dated 03 Oct 2019 with all the consequential benefits to the applicant.*
- (f) *To direct the respondents to grant disability pension to the applicant @40% for life from the date of discharge i.e. 27 Jul 2018, together with the benefits of broad banding as stipulated in Government of India, Ministry of Defence Policy letter dated 31 Jan 2001.*

2. Briefly stated, applicant was enrolled in the Army Medical Corps of Indian Army on 28.03.2010 and was invalided out from service on 28.07.2018 (FN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (ii) of the Army Rules, 1954. At the time of invalidation from service, the

Invaliding Medical Board (IMB) held at Military Hospital, Kirkee on 18.06.2018 assessed his disability '**RECURRENT DEPRESSIVE DISORDER (F-33)**' @ 40% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 10.10.2018. The applicant preferred First Appeal and Second which too were rejected vide letters dated 03.10.2019 and 26.11.2020 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 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 contacted 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 applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 40% for life has been regarded as NANA by the IMB, 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 Invaliding 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 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?

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 IMB has denied attributability to the applicant only by endorsing that the disability 03.10.2019 and 26.11.2020 is neither attributable to nor aggravated (NANA) by service on the ground of

onset of disability on 11.08.2016 while posted in Peace location (Chandimandir), therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Invaliding Medical Board for denying disability pension to applicant is 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 28.10.2010 and the disability has started after more than five years of Army service i.e. on 11.08.2016. 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 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.

10. In view of the above, the **Original Application No. 172 of 2020** deserves to be allowed, hence **allowed**. The impugned order dated 10.10.201, 03.10.2019 and 26.11.2020, rejecting the claim for grant of disability pension, are set aside. The disability of the applicant is held as aggravated by Army 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 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 : 27 September, 2021

AKD/-