

**Court No. 1 (List B)**  
**Reserved**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 43 of 2016**

**Thursday this the 13<sup>th</sup> day of April, 2017**

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Ex-Dfr (ACP-1) Narendra Kumar (Retired) No.1088864A  
S/o Late Ghamari Thakur, Resident of Sharafat Nagar  
Colony, Sarojini Nagar (Rehimabad),  
Lucknow (U.P.) Pin-226002.

..... Applicant

By Legal Practitioner

Col (Retd) A.K.Srivastava,  
Ld. Counsel for the Applicant.

Vs.

1. Union of India through the Secretary, Ministry of Defence,  
New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of  
Defence (Army), South Block, New Delhi – 110011.
3. O.C. Records, Armed Corps, Ahmadnagar
4. Principal Controller of Defence Account (Pension),  
Draupadi Ghat, Allahabad.

..... Respondents

By Legal Practitioner

Shri Rajiv Pandey,  
Ld. Counsel for the Respondents.

## **ORDER**

### **“Per Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for rounding off of disability pension, whereby he has claimed the following reliefs :

*“(a) issue/pass an order or direction of appropriate nature to quash/set-aside rejection of the disability pension claim of the applicant by Army HQ on 24 Jul 2015 as intimated by Armoured Corps Records letter dated 28 Aug 2015 attached as ANNEXURE A-2.*

*(b) Issue/pass an order or direction of appropriate nature to the respondents to also give the benefits of “rounding-off” of the disability pensionary benefits to the applicant as provide4d vide Government of India, Ministry of Defence letter No.1(2)/97/D (Pen-C) dated 31-01-2001 supported by the position held by the Supreme Court.*

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

*(d) Allow this application with costs.”*

2. The factual matrix of the case is that the applicant was enrolled in the Army on 05.12.1988 and was discharged from service on 31 December 2007 (Afternoon) under Army Rule 13(3) Item III (v) of Army Rules, 1954 being placed in low medical category before completion of his terms of engagement and he was granted disability pension @ 20% for life which was rounded off to 50%. Subsequently, as per directions of Hon’ble Court, he rejoined the Army on 31.01.2009 with all consequential benefits. On completion of his terms of engagement, he was discharged from service on 31 December 2012. The Medical Board before his discharge, considered his disability for (i) DIABETES MELLITUS TYPE-II – 6% to 10% and for METABOLIC SYNDROME – 6% to 10% and composite disability was 20% for life and net assessment for both the disabilities is 10% for life. The claim for disability pension was rejected and subsequently, first appeal was also rejected vide order dated 24.07.2015. He

submitted his second appeal on 20 October 2015 which has not been decided as yet despite several reminders Aggrieved, the applicant has preferred this Original Application. The delay in filing the Original Application has been condoned vide order dated 04.02.2016.

3. Learned counsel for the applicant submits that since the second appeal preferred by the applicant has not yet been decided and is still pending since 20.10.2015, therefore, the case be decided in accordance with clause (b) of sub-section (2) of Section 21 of Armed Forces Tribunal Act, 2007 by the Tribunal and it may not be remanded to the respondents. Learned counsel for the respondents has no objection to this. Accordingly, with the consent of both the parties, to meet the ends of justice, we consider it appropriate to decide the Original Application on merits.

4. We have heard Col (Retd) A.K.Srivastava, learned counsel for the applicant, Shri Rajiv Pandey, learned counsel for the respondents and perused the record.

5. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was considered medically and physically fit to join the Army and was discharged in low Medical category, as such he is entitled to disability pension. He further submitted that when he was initially discharged in 2007, he was getting 20% disability pension for life as assessed by the Medical Board which was rounded off to 50%. Now, finally when he has been discharged in 2012, the Medical Board assessed his disability for the disease i.e. (i) DIABETES MELLITUS TYPE-II – 6% to 10% and for METABOLIC SYNDROME – 6% to 10% and composite disability was 20% for life and net assessment for both the disabilities is 10% for life. Since the Medical Board in 2007 had also recommended 20% disability for life, as such the medical opinion cannot change in 3-4 years, as such, he is entitled to disability pension @ 20% for life which should be rounded off to 50% as per policy letter dated 31.01.2001. He further submitted that his case is squarely covered by the decisions of Hon'ble The Apex Court in the case of **Dharamvir Singh Vs. Union of India and Ors** reported in

**(2013) 7 Supreme Court Cases 316** and also **Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC.

6. **Per contra**, Learned Counsel for the respondents submitted that though the applicant was in receipt of disability pension as per the recommendation of the Medical Board in 2007, however, after he rejoined the Army and was finally discharged in December 2012, the Medical Board assessed his composite disability as 20% for life, (i) DIABETES MELLITUS TYPE-II – 6% to 10 and (ii) METABOLIC SYNDROME – 6% to 10% and composite disability was 20% for life and net assessment for both the disabilities is 10% for life. He further submitted that as per policy applicant's disability pension claim was rightly rejected as per Paragraph 173 of Pension Regulations 1961 (Part-1), which clearly states that pension may be granted to an individual who is invalided from service on account of disability, which is attributable to or aggravated by military service and percentage of disablement is assessed as 20% or above.

7. We have gone through the relevant rules and regulations on the issue on the question of attributability of disability to military service, we would like to refer to the judgment and order of Hon'ble The Apex Court in the case of **Dharamvir Singh (supra)**, in which Hon'ble The Apex Court had observed the provisions of the Pension 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).*

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*31. In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of Para 2 of the opinion of the Medical Board, which is as follows :-*

*"(d) In the case of a disability under (c) the Board should state what exactly in their opinion is the cause thereof.*

**YES**

*Disability is not related to military service".*

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*33. In spite of the aforesaid provisions, the pension sanctioning authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rule 5 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.*

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*35. In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31-7-2009 in Union of India v. Dharamvir Singh and uphold the decision of the learned Single Judge dated 20-5-2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per the order passed by the learned Single Judge. No costs."*

8. We would also like to recall the judgment on grant of disability pension passed in the case of **Sukhvinder Singh** (supra), Hon'ble The Apex Court has held as under:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined....."*

9. In the instant case, the applicant was enrolled in a fit medical condition and when he was initially discharged in 2007, he was granted 20% disability pension for life, which was rounded off to 50%. After rejoining the Army in 2009, when he was finally discharged in December 2012, the Medical Board has assessed his composite disability as 20% and for grant of disability pension, it is assessed at 10% for life and the disease has been considered as neither attributable to nor aggravated by service, but the Medical Board has not given any reasoned opinion for reaching to that conclusion and also there is no entry of the disease or disability in the service record at the time of enrolment. In the cases of **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra), it has been clearly postulated that when there is no note of such disease or disability available in the service record of the applicant at the time of acceptance for service, it would be presumed that the applicant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service. In this case, we also observe that the applicant was granted disability pension after

his discharge in 2007 and also that the Medical Board in their opinion on page 5 against column 2 i.e. '**Did the disability exist before entering service**', has mentioned '**NO**'. The applicant's case is covered by **Dharamvir Singh** (supra) and **Sukhvinder Singh** (supra) and he is entitled to disability pension.

10. For entitlement of rounding off, we recall the decision of Hon'ble The Apex Court in the case of **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 noded 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 retired on attaining the age of superannuation or completion of their terms of engagement, if found to be suffering from some disability. Keeping the policy letter dated 31.01.2001 and judgment of **Ram Avtar & ors** (supra), we are of the view that the applicant is entitled to the benefit of rounding off.

11. Keeping in view the judgments of **Dharamvir Singh**, and **Sukhvinder Singh**(supra), we converge to the view that the impugned order passed by the respondents was not only unjust, illegal but was also not in conformity with rules, regulations and law and the impugned order deserves to be set aside. The applicant is entitled to disability pension @ 20% for life which needs to be rounded off to 50% as per policy letter dated 31.01.2001 and in terms of decision of Hon'ble The Apex Court in the case of **Ram Avtar** (supra).

12. Thus in the result, the **Original Application No. 43 of 2016** succeeds and is allowed. The impugned order dated 24.07.2015 rejecting the claim of the disability pension of the applicant is set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life from the date of discharge i.e. 31 December 2007, which would stand rounded off to 50%. The applicant be granted disability pension alongwith arrears within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the

stipulated time, they will have to pay the interest @9% on the amount accrued on it from due date till the date of actual payment.

13. No order as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

(Justice D.P. Singh)  
Member (J)

Dated : April, 2017  
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