

RESERVED

COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 210 of 2016

Wednesday, this the 17th day of January, 2018

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

No. 151596-N Ex- Satya Pal Verma, son of Late – Bhakta Singh

Resident – Lalla Kherapo – Bansa Dist- Hardoi, PIN - 241303

..... **Applicant**

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate**
Applicant

Versus

01. Union of India through the Secretary, Ministry of Defence, New Delhi.
02. Chief of Naval Staff Integrated Head Quarter Ministry of Defence (Navy), South Block New Delhi. Pin – 110011.
03. The Principal Controller of Defence Accounts (Pension) Draupedi. Ghat, Allahabad (UP)
04. Officer in Charge, Bureau of Sailors Cheetah, Camp, Mankhurd Mumbai --- 400088.

----- Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal, Advocate,**
Respondents. **Sr. Central Government Standing Counsel**

ORDER**“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The Present Application under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred for grant of benefit by implementing the letter dated 27.05.2011 and grant disability pension attended with the relief of rounding off of disability to 50% for life.

2. The facts in nutshell are that the Applicant was enrolled in the Indian Navy on 07.05.1986 and was discharged on 30.06.2011 after rendering more than 25 years of service. Since at the time of discharge, the Applicant was in low medical category, he was brought before Release Medical Board which assessed his disability as less than 20% for life as he was founding suffering from “ OSTEIO ARTHRITIS (B/L) KNEE”. The Release Medical Board opined the disability as not attributable to but aggravated by the service. His claim for disability was processed and forwarded to PCDA (N) Mumbai but the same was returned. It is in this perspective that the present O.A has come to be filed.

3. We have heard learned counsel for the parties and perused the materials on record.

4. Learned counsel for the respondents contends that the claim for disability pension was erroneously processed and forwarded by the office vide letter dated 27.05.2011. The only ground urged for rejecting the claim for disability pension was that the disability was less than 20% and further that the Applicant was discharged on completion of service tenure.

5. Though the Release Medical Board has held the disability as aggravated by Military service, however, the law on the issue of attributability has been well settled by Hon'ble Supreme Court in the case of **Dharamvir Singh vs. Union of India & Ors.**

"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)."

6. Without delving deeper into the matter, suffice it to refer to the decision of the Apex Court in to the decision of Hon'ble The Apex Court in **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014**) in which Hon'ble the Apex Court noded in disapproval at the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who had completed the

normal tenure of their service in low medical category. The relevant portion of the decision being relevant 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."

7. As a result of foregoing discussion, we are of the view that the Applicant is entitled to disability pension vis a vis his disability which was assessed as less than 20% for life but aggravated by military service. The prayer for rounding off of disability is also allowed and the disability which was initially assessed as less than 20% for life shall stand rounded off to 50% for life.

8. In the result, the O.A is allowed to the extent of rounding off of disability from less than 20% to 50%. The impugned orders rejecting the claim for disability pension

are set aside. The Applicant shall be entitled to disability pension at the rate of 50% for life from preceding three years of filing this O.A. The date of filing of the O.A is 15.01.2016. The Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

9. There shall be no orders as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: 17 January, 2018

MH/-