

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO 143 of 2018**Friday, this the 27<sup>th</sup> day of April 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**No. JC-690323Y Ex-Sub Kali Kishore S/O Prabhu Dayal R/O H. No.-592  
Chha/682, Swroop Nagar, Kharika, Telibagh, Lucknow (UP).

....Applicant

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

Versus

1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff Integrated Head Quarters Ministry of Defence, South Block New Delhi.
3. Appellate Committee First Appeal (ACFA), Dir PS-4 AG's Branch, Integrated HQ of MoD (Army), DHQ, PO-New Delhi-110011.
4. Officer In-Charge, Army Medical Corps Records, PIN-226002 C/O 56 APO.
5. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP).

....Respondents

Ld. Counsel for the : **Mrs Anju Singh, Central**  
Respondents. **Govt Counsel assisted by**  
**Maj Salen Xaxa, OIC Legal Cell.**

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

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension and its rounding off.

The applicant has prayed for the following relief:

(a) To issue order direction to Respondent No-4 to give the benefit of Govt of India, Ministry of Defence letter dated 31.01.2001 and calculate the disability of applicant @ 30% for life presuming same to be attributable to service.

(b) To issue order direction to Respondent No-4 to give the benefit of Govt of India, Ministry of Defence letter dated 31.01.2001 and calculate the disability of applicant @ 50% from the date of discharge i.e. 30.09.2016.

(c) To issue order or direction to respondents to pay arrears with interest @ 12% to the applicant.

(d) Any other relief as considered by this Hon’ble Tribunal is awarded in favour of the applicant.

(e) Cost be awarded to the applicant.

2. We have heard Shri Parijaat Belaura, Ld. Counsel for the applicant and Mrs Anju Singh, Ld. Counsel for the respondents assisted by Maj Salen Xaxa, OIC Legal Cell and perused the records.

3. Brief facts of the case are that the applicant was enrolled as Sep in the Army Medical Corps (AMC) on 07.03.1993 and was discharged from service in

low medical category due to “**Diabetes Mellitus Type-2 and Primary Hypertension**” on 01.10.2016 under Army Rule 13 (3), item I (i) of the Army Rules 1954 after rendering 23 years, 06 months and 25 days service. Prior to his discharge from service, the applicant was brought before Release Medical Board held at Military Hospital, Jalandhar Cantt on 16.04.2016 wherein disability of the applicant “**Diabetes Mellitus Type-2 and Primary Hypertension**” was considered as neither attributable to nor aggravated (NANA) by military service and assessed (i) **Diabetes Mellitus Type-2 @ 20%** for life and (ii) **Primary Hypertension @ 30%** for life (Composite assessment for both disabilities @ 40% for life). The Release Medical Board assessed net assessment qualifying for disability pension as Nil due to NANA factor. The applicant’s claim for grant of disability pension was preferred to competent authority which was rejected and conveyed to the applicant vide letter dated 22.12.2016 with an advice to submit an appeal against the decision of competent authority to the Appellate Committee on First Appeals (ACFA) within six months from the date of receipt of the communication. The applicant preferred the first appeal which was rejected vide letter dated 11.10.2017 and communicated to the applicant vide letter dated 28.10.2017 with an advice to prefer second appeal to the appellate committee on pension (SACP).

4. Being aggrieved with the decision of the competent authority the applicant has filed the instant Original Application.

5. Per contra the Ld. Counsel for the respondents contended that the applicant is not entitled for disability pension as specified in Rule 173 of Pension Regulations for the Army 1961 (Part-I) which stipulated that ‘unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is

attributable to or aggravated by military service and is assessed at 20% or over". Ld. Counsel for the respondents further stated that in the instant case the Release Medical Board has concurrently held that the disability suffered by the applicant is neither attributable to nor aggravated by military service and there is nothing on record, which establishes that the disability suffered by the applicant is either attributable to or aggravated by military service.

6. Ld. Counsel for the applicant further submitted that the applicant was enrolled in the Indian Army and at the time of enrolment, he was examined by the duly constituted Medical Board which found him mentally and physically fit for service in the Indian Army and there is no note, whatsoever, in the service documents that he was suffering from any disease. The applicant's claim for disability pension was rejected by the competent authority stating that disability of the applicant is neither attributable to nor aggravated by military service. Ld. Counsel for the applicant further submitted that since the disease was contracted during the service, it is attributable to and aggravated by military service.

7. In the instant case, the applicant was enrolled in the Army on 07.03.1993 and he was discharged in low medical category on 01.10.2016. The applicant has been denied disability pension because the Medical Board has considered the disability as neither attributable to nor aggravated by military service. We observe that in this case the Medical Board has opined that onset of disease is in peace location and hence the applicant's disability is neither attributable to nor aggravated by military service. We also observe that there is no note of such disease or disability in the service record of the applicant at the time of enrolment and respondents have not been able to produce any document to prove that the disease existed before his enrolment. In fact, Medical Board in

their opinion on page 5 against column 2 i.e. ***'Did the disability exist before entering service', has mentioned 'NO'.***

8. We have given anxious considerations on pleadings of both the parties. 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 vs Union of India & Ors*** reported in (2013) 7 SCC 316. The relevant portion of the aforesaid judgment, for convenience sake, is reproduced as under:-

*"18. A disability "attributable to or aggravated by military service" is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982, as shown in Appendix II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:*

*"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*

***Prior to and during service***

*(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*

*(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."*

*From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service."*

*"28. The learned counsel for the respondent Union of India relied on decisions of this Court in **Om Prakash Singh v. Union of India** (2010)12 SCC 667, **Ministry of Defence v. A.V. Damodara** (2009) 9 SCC 140, **Union of India v. Ram Prakash** (2010) 11 SCC 220 and submitted that this Court has already considered the effect of Rules 5, 14(a), (b) and (c) and*

*held that the same cannot be read in isolation. After perusal of the aforesaid decisions we find that Rules 14(a), 14(b) and 14(c) as noticed and quoted therein are similar to Rule 14 as published by the Government of India and not Rule 14 as quoted by the respondents in their counter-affidavit. Further, we find that the question as raised in the present case that in case no note of disease or disability was made at the time of individual's acceptance for military service, the Medical Board is required to give reasons in writing for coming to the finding that the disease could not have been detected on a medical examination prior to the acceptance for service was neither raised nor answered by this Court in those cases. Those were the cases which were decided on the facts of the individual case based on the opinion of the Medical Board."*

9. It is made clear in the aforesaid judgment of Hon'ble Apex Court (supra) that once a person has been enrolled in fit medical condition and is discharged in low medical category, simply recording a conclusion that the disability is not attributable to military service, without giving sufficient reasons as to why the disease or disability is not deemed to be attributable to service, clearly shows lack of proper application of mind by the Medical Board. In this case the opinion of Medical Board that the disease is NANA because it originated in peace station is not logical and hence is not acceptable. In the absence of any evidence on record to show that the applicant was suffering from any ailment at the time of his enrolment in service, it will be presumed that deterioration of his health has taken place due to military service. Therefore, in view of the judgment in the case of **Dharmvir Singh** (supra), since the applicant was enrolled in fit medical condition and was discharged in low medical category, the disability is to be considered as attributable to and aggravated by military service.

10. On the issue of rounding off of disability from 40% (composite) to 50%, we feel that the matter with respect to rounding off should also be dealt with to

do complete justice, as such in the interest of justice in view of the law laid down by Hon'ble Apex Court, we propose to decide this issue also. In consonance with the policy letter dated 31.01.2001 and in terms of the decision of Hon'ble Apex Court in the case of ***Union of India & Ors vs. Ram Avtar & Ors***, Civil Appeal No 418 of 2012 dated 19.12.2014, we are of the view that the applicant is entitled to the benefit of rounding off of his disability from 40% to 50% for life.

11. In view of the above, we allow the present O.A and set aside the impugned orders and direct the respondents to grant disability pension to the applicant @ 30% which shall stand rounded off to 50% from the date of discharge i.e. 01.01.2016, along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 9% per annum from the due date, till actual payment thereof.

O.A. is **allowed** accordingly.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: April, 2018  
Rathore

**(Justice S.V.S. Rathore)**  
**Member (J)**