

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No 19 of 2023

Tuesday, this the 28th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 15481387L, Ex. SWR/ACP-Hav. Sanjay Kumar Singh, son of Late Dharampal Singh, R/o H. No. B-75, Kalli Paschim Colony, Raibareli Road, Lucknow – U.P. - 226014.

----- Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi - 110011.
2. Chief of the Army Staff, IHQ MoD (Army), South Block, New Delhi.
3. The Addl. Dte. Gen of Personnel Services, Adjutant General’s Branch (AG/PS-4 (Imp-II)), IHQ of MOD (Army), DHQ PO, New Delhi - 110 011.
4. Office-in-Charge, Armed Corps Records, PIN-900476, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad, Uttar Pradesh -211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh,
Central Govt Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) *to issue/pass an order to set-aside quash the letter dated 15481387L/DP/Pen dated 29.11.2022 and letter dated 16.02.2021, passed by Respondent no. 4, which is being annexed as Annexure No. A1 and Annexure No. A2 to this Original Application.*
- (b) *To issue/pass an order of directions to the respondents to grant disability element of disability pension @40% percentage as assessed in Release Medical Board Proceedings of applicant from date of SOS i.e. 01.01.2021 (Date of Discharge 31.12.2020) along with interest @ 12% on arrear in light of Hon’ble Apex Court.*
- (c) *To issue/pass an order or directions to the respondents to grant benefit of rounding off from @ 40% to 50% disability pension from SOS i.e. 01.01.2021 (Date of Discharge 31.12.2020) along with interest @ 12% on arrear in light of Hon’ble Apex Court.*
- (d) *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper*

under the circumstances of the case in favour of the applicant.

(e) *To allow this original application with costs.”*

2. Counter affidavit filed by the respondents is taken on record.
3. The facts of the case, in brief, are that applicant was enrolled in the Indian Army on 06.12.2000 and was discharged from service on 31.12.2020 (AN) in low medical category after serving 20 years and 25 days of service. At the time of discharge from service, the Release Medical Board (RMB) assessed his disabilities (i) **'DIABETES MELLITUS TYPE-II (E11.9)'** @20% for life and (ii) **'PHEOCHROMOCYTOMA (RT) ADRENAL GLAND (OPTD) (E-27.5)'** @20% for life and composite disability was assessed @ **40%** for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 16.02.2021. His First appeal dated 12.09.2022 for grant of disability pension has also been rejected by the respondents vide order dated 29.11.2022. It is in this perspective that the applicant has preferred the present Original Application.
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 in

Army. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by Army Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

5. On the other hand, Ld. Counsel for the respondents contended that applicant was discharged from service after rendering 20 years and 25 days of service. RMB assessed disabilities (i) **'DIABETES MELLITUS TYPE-II (E11.9)'** @20% for life and (ii) **'PHEOCHROMOCYTOMA (RT) ADRENAL GLAND (OPTD) (E-27.5)'** @ 20% for life but considered as neither attributable to nor aggravated by military service with 40% disablement and NIL percentage of disability qualifying for disability pension for life. These diseases have no casual connection to Army service. Hence these disabilities cannot be treated as attributable to military service under the provisions of Rule 53(a) of Pension Regulations 2008 (Part-I). The applicant is not entitled to disability element of disability pension as his disabilities are assessed as NANA. He pleaded for dismissal of the Original Application.

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 and we find that the questions which need to be answered are of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Army Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of 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 the RMB has denied attributability to the applicant only by endorsing that the disabilities **DIABETES MELLITUS TYPE-II (E11.9)** (ii) '**PHEOCHROMOCYTOMA (RT) ADRENAL GLAND (OPTD) (E-27.5)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability **DIABETES MELLITUS TYPE-II** occurred in Jul 2015 while posted in Peace location (Pathankot), and the disability **PHEOCHROMOCYTOMA (RT) ADRENAL GLAND (OPTD)** is due to genetic or autoimmune disorder cause is unknown and there is no evidence of infection or radiation, therefore, applicant is not entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release 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 Army service. The applicant was enrolled in Army on 06.12.2000 and the disabilities have been started after more than 14 years of Army service i.e. in Jul 2015. 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 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 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. In view of the above, the **Original Application No. 19 of 2023** deserves to be allowed, hence **allowed**. The impugned orders rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @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 element 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 Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 28th April, 2023
RKM/-