

Court No. 1

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

Original Application No 70 of 2023

Monday, this the 10th day of April, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 14825919L Ex Naik Satya Deo Mishra, S/O Deo Narain, Village:
Pure Kashi Ram, P.O. Doviya Tehsil: Musafir Khana Distt:
Sultanpur (U.P.)

-----Applicant

Ld. Counsel for the Applicant: **Col RC Dixit (Retd), Advocate**

Versus

1. Union of India, Through Secretary of Defence, Ministry of Defence, 227-B Wing, Sena Bhawan, New Delhi - 110011
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), Sena Bhawan DHQ PO New Delhi - 110011
3. Principal Controller of Defence Accounts (Pension) Draupadi Ghat Allahabad.
4. Chief Records Officer, ASC College & Centre, Bangalore, Karnataka - 560010.

..... 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:-

- I. To grant 50% disability pension to the applicant for life as recommended by the Release Medical Board dt 13 August 2013.*
- II. To Penalize The A.S.C. Records for not sending Release Medical Board documents to the applicant since past 9 years.*
- III. To grant applicant the benefit of broad banding of disability element @50% for life with effect from 01 September 2013 after date of his discharge on 31/8/2013 (vide para 7.2 of MoD letter No. 1 (2)/97/1/D (Pen-c) dated 31.1.2001, keeping in view all his disabilities recorded during Medical Board Proceedings.*
- IV. To grant benefit of disability element from the day of retirement of the applicant with all consequential benefits with interest @ 18% P.A. as the disability had been established vide Medical Board Proceedings dt 13 August 2013.*
- V. To issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the*

circumstances of the case for causing mental agony to the applicant.

VI. Allow this application with cost.”

2. Briefly stated, applicant was enrolled in the Indian Army on 28.08.1998 and was discharged on 31.08.2013 (A/N) in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) assessed his disabilities(a) **‘PRIMARY HYPERTENSION (1-10)’** @ 30% for life and (b) **“OBESITY (E-66)”** @ 1- 5% 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 30.10.2013. Being denied by disability pension, the instant Original Application has been filed.

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 after retirement from service applicant was granted service pension and other retiral dues. The (ii) disability i.e. '**Obesity**' assessed @ 1% to 5% cannot be by any stretch of imagination regarded due to military service. Proper physical exercise and diet control etc are preventive measures to keep the said disability at bay. The applicant is primarily responsible for the Obesity. He was first diagnosed as a patient of Obesity on 29.09.2008, hence Obesity cannot be considered as attributable to and aggravated by army service. It is in no way connected with service. First disability of the applicant i.e. Hypertension has been assessed @30% for life has been regarded as NANA by the RMB as the disability Primary Hypertension has occurred in peace area, 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 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 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 RMB has assessed (ii) disability i.e. **Obesity** as 5% for life. Proper physical exercise and diet control are preventive measures to keep the said disability at bay. The applicant is primarily responsible for the Obesity. He was first diagnosed as a patient of Obesity on 29.09.2008, hence Obesity cannot be considered as attributable to and aggravated by army service. It is in no way connected with service. RMB has denied attributability for the disability '**PRIMARY HYPERTENSION (I-10.0, Z-09.0)**' only by endorsing that the disability is neither attributable to nor aggravated (NANA) by

service on the ground of onset of disability first started in June 2013 while posted in Peace location at Bikaner (Rajasthan), 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 service. The applicant was enrolled in Indian Army on 28.08.1998 and the disabilities first started after more than 24 years of Army service i.e. in July 2013. 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 (i) disability i.e. **PRIMARY HYPERTENSION (I-10.0, Z-09.0)** assessed @ 30% should be considered as aggravated by 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

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.”

9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from three years prior to filing of Original Application.

11. In view of the above, the **Original Application No. 70 of 2023** deserves to be partly allowed, hence partly **allowed**. The impugned order rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The applicant is not entitled disability element for the disability **“Obesity”** being not considered as attributable to and aggravated by Army service. The applicant is

entitled to get disability element for the disability “**Primary Hypertension**” @ 30% for life which would be rounded off to 50% for life from three years prior to filing of the Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from from three years prior to filing of the Original Application. Original Application was filed on 06.01.2023. 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.

12. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated: 10th April, 2023
RKM/-