

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 670 of 2022**Thursday, this the 13th day of April ,2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Service No. 739930-N, Ex. JWO, Kamal Kumar Omar, S/o Shri Dal Chandra Omar, House No. 45/7, Gopal Nagar, Yashoda Nagar, District – Kanpur Nagar, Uttar Pradesh, Pin- 208011.

..... Applicant

Ld. Counsel for the : **Shri Keshav Sharma**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, south Block, New Delhi -110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bahwan, New Delhi -110106.
3. The Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi -110010.
4. The PCDA (Pension), Draupadi Ghat, Allahabad.
5. The JCDA (Air Force), Subroto Park, New Delhi -110010.

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey**, Advocate
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (a) *Declare the disabilities (i) Partial Tear ACL (Lt) Knee (old), (ii) Strain PCL (LT) Knee (Old), (iii) Dyslipdemia, (iv) Type - 2 Diabetes Mellitus (Old), (v) Primary hypertension (Old) and (vi) Allergic Bronchial Asthma (Fresh) as aggravated by Military Service.*
- (b) *To pass an order or direction commanding the respondents to grant the benefits disability pension from the next date of discharge i.e. 29 Feb 2020 @ 60% per annum along with interest @12% per annum till the actual realization of aforesaid amount.*
- (c) *To issue/pass any other orders/direction to respondents to grant the benefits of rounding of the disability pension up to 75% for life in terms of Govt. of India letter dated 31 Jan 2001 as various judgment of apex Court as well as this Hon'ble Tribunal.*
- (d) *To issue/pass any other orders/ direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant and render justice.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 03.02.1994 and discharged on 29.02.2020 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at SMC 32 Wing Air Force on 07.01.2020 assessed his disabilities (i) '**PARTIAL TEAR ACL (LT) KNEE (OLD) S83.5, Z09.0**' as attributable to service (ii) '**STRAIN PCL (LT) KNEE (OLD) S83.4,Z09.0**' as attributable to service, both @10% (iii) '**DYSLIPDEMIA (OLD) E78.2, Z09.0**' @ 5% as neither attributable to nor aggravated by service (NANA) (iv) '**TYPE II DIABETES MELLITUS (OLD) E-11, Z09.0**' @ 20% as NANA (v) '**PRIMARY HYPERTENSION (OLD)I10.0, Z09.0**' @30% as NANA and (vi) '**ALLERGIC BRONCHIAL ASTHMA – (FRESH) J 45.0 @20%**' as aggravated by service, **composite disabilities @ 60% for life**. The applicant was granted disability element of disability pension for the sixth disability. The applicant's claim for grant of disability pension for

the first to fifth disabilities was rejected vide letter dated 20.01.2021. The applicant preferred First Appeal which too was rejected vide letter dated 13.10.2021. The applicant preferred Second Appeal dated 30.11.2021 but not avail. It is in this perspective that the applicant has preferred the present Original Application.

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 third, fourth and fifth diseases of the applicant have been regarded as neither attributable to nor aggravated by service. These diseases of the applicant were also contracted during the service, hence they are also 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 element of disability pension for the first, second, third, fourth and fifth disabilities also and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that the applicant was granted disability element of disability for the sixth disability. Although, the first and second diseases of the applicant have been regarded as attributable to military service but its degree is @10% which is less than 20% and the third, fourth and fifth diseases have been regarded as NANA by the RMB, hence applicant is not entitled to

disability element of disability pension for these disabilities. 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 third, fourth and fifth disabilities of the applicant are also attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of pension for these disabilities also?

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 denied attributability to the applicant only by endorsing that the fourth and fifth disabilities i.e. **‘TYPE II DIABETES MELLITUS (OLD) E-11, Z09.0’** and **‘PRIMARY HYPERTENSION (OLD)I10.0, Z09.0’** are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in October, 2018 and November, 2019

respectively while posted in Peace location (Jodhpur), therefore, applicant is not entitled to disability element of disability pension for these disabilities. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability element of disability pension to applicant for these disabilities are 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 military service. The applicant was enrolled in Indian Army on 03.02.1994 and the first and second disabilities have started after more than 24 and 25 years of Army service i.e. in October, 2018 and November, 2019 respectively. 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 fourth and fifth disabilities i.e. '**TYPE II DIABETES MELLITUS (OLD) E-11, Z09.0**' and '**PRIMARY HYPERTENSION (OLD) 10.0, Z09.0**' of the applicant should also be considered as aggravated by military service.

8. However, with regard to third disability i.e. '**DYSLIPIDEMIA (OLD) E78.2, Z09.0**' we are agree with the opinion of the RMB as NANA as it is metabolic disease with no causal connection to service.

9. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

10. In the instant case there are functional effects of the second and third disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The applicant's composite disabilities is @60% for life and the degree of third disability is @5%. Accordingly, we hold that composite assessment of first, second, fourth, fifth and sixth disabilities is more than @50% for life.

11. 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 invalided 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."*

12. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of

disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

13. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension more than @50% for life to be rounded off to 75% for life may be extended to the applicant from the next date of his discharge.

14. In view of the above, the **Original Application No. 670 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension for the first, second, fourth and fifth disabilities are set aside. Be it mentioned that the applicant's first, second and sixth disabilities have already been regarded as attributable to or aggravated by military service and the applicant is getting disability element for the sixth disability. The fourth and fifth disabilities i.e. **'TYPE II DIABETES MELLITUS (OLD) E-11, Z09.0'** and **'PRIMARY HYPERTENSION (OLD)I10.0, Z09.0'** of the applicant are also held as aggravated by Army Service. The applicant is held entitled to get disability element more than @50% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant more than @50% for life which would

stand rounded off to 75% for life from the next date of his discharge. The disability element of disability pension paid from the next date of applicant's discharge shall be adjusted from the arrears. 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

15. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 13 April, 2023

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