

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 891 of 2022**Tuesday, this the 11th day of April, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ex Sep Baban Thakur (No. 1480355-A) son of Shri Ral Lal Thakur, permanent address – Village Chkand, Post – Chakand Bazar, Distt. Gaya, State-Bihar – 804404, Presently residing at- H. No. C-628c/10, Near Meredian School, Sarvodaya Nagar, Lucknow – 226016.

-----Applicant

Ld. Counsel for the Applicant: **Shri Vinay Pandey, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. The Deputy Director General, Director General DSC, General Staff Branch, IHQ of MOD (Army), West Block-III, R.K. Puram, New Delhi - 110 066.
3. Senior Record Officer, Defence Security Corps, Mill Road, Burnecherry, Kannur, Kerala – 670013.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad, Uttar Pradesh -211014.

..... Respondents

Ld. Counsel for the Respondents :**Shri Gyan 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) Quash the Impugned order PEN/DP/1480355A/10/19 dated 24.02.2020.*
- (b) Direct the respondents to grant of disability pension (Service element + Disability element) to the applicant duly round off to 50% w.e.f. his date of discharge i.e. 01.11.2019.*
- (c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the next date of retirement with all the consequential benefits.*
- (d) Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents.”*

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 Defence Security Corps on 21.03.2013 and was discharged from service on 31.10.2019 (AN) in low medical category after serving 06 years 07 months and 10 days of service. At the time of

discharge from service, the Release Medical Board (RMB) assessed his disabilities (i) '**TYPE-II DIABETES MELLITUS (E66.9)**' @20% for life and (ii) '**PRIMARY HYPERTENSION (I-10)**' @30% for life **composite disabilities @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 24.02.2020. His Legal notice-cum-Representation/appeal dated 14.05.2020 for grant of disability pension is still pending before the respondents. 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 DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in DSC. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by DSC 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 06 years 07 months and 10 days of service. RMB assessed disabilities (i)

'TYPE-II DIABETES MELLITUS (E66.9)' and (ii) **'PRIMARY HYPERTENSION (I-10)'** 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 DSC service. Hence these disabilities cannot be treated as attributable to military service under the provisions of Army Rule 13(3) item III (in) (a)(1), issued vide Gazette Notification SRO No. 22 dated 13.05.2010. 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 DSC 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'** and **'PRIMARY HYPERTENSION'** are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities in Jun 2016 while posted in Peace location (Hasimara), 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/DSC training and associated stress and strain of DSC service. The applicant was enrolled in DSC on 21.03.2013 and the disabilities have been started after more than 03 years of DSC service i.e. in Jun 2016. 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 DSC 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 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."*

10. In view of the above, the **Original Application No. 891 of 2022** deserves to be allowed, hence **allowed**. The impugned order 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 DSC 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: 11th April, 2023
RKM/-