

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 167 of 2023**Monday, this the 15th day of April, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

IC-41902K, Col. Rajiv Bhardwaj (Retd.), Flat No. 602, Sears Tower, Omax Heights, Vibhuti Khand, Gomti Nagar, Lucknow - 226010.

..... ApplicantLd. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate
Shri Shashi Kant Chaturvedi, Advocate

Versus

1. Union of India, through, Secretary, Ministry of Defence (Army), DHQ PO, New Delhi -11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. Chairman Appellate Committee on First Appeal, ADGPS, AG’s Branch, IHQ of MoD (Army), PIN-900256, C/o 56APO.
4. ADG Manpower (P&P), AG’s Branch/MP-6(c), IHQ of MoD (Army), West Block –III, R.K. Puram, New Delhi -110066.
5. Chairman Second Appellate Committee on Pension ADGPS, AG’s Branch, IHQ of MoD (Army), New Delhi-110001.
6. Principal Controller of Defence Accounts, Draupadi Ghat, Prayagraj (U.P).

.....RespondentsLd. Counsel for the Respondents. : **Shri Anurag Mishra**, Advocate
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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) *Issue/pass an order or direction of appropriate nature to quash the decision taken by Army Authorities as mentioned in rejection of First Appeal vide IHQ of MoD (Army), ADGPS AG’s Branch letter bearing No.13101/IC-41902K/ ENGRS/MP-6/35/2017/Appeal / AG/PS-4(Imp-II) dated 27 Nov 2017 and Rejection of Second Appeal vide ADGPS AG’s Branch IHQ of MoD (Army), letter bearing No.B/38046A/269/2018 / AG/PS-4(2nd Appeal) dated 15 Jan 2019, which is communicated to the applicant vide IHQ of MoD (Army) ADG manpower (P&P) AG’s Branch /MP-6 letter bearing No. 13101/IC-41902K/ Engrs/MP-6(C) dated 23 Jan 2019 Annexure No. A-1 rejecting the disability pension claim.*
- (b) *Issue/pass an order or direction of appropriate nature directing the respondents to concede the attributability and aggravation of ID due to military service and grant disability element of disability pension with the benefit of rounding off @75% form the next date of discharge i.e. 01.02.2017.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.*
- (d) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with costs.*

2. Briefly stated, applicant was commissioned in the Indian Army on 09.06.1984 and retired on 31.01.2017 (AN) on attaining the age of superannuation. At the time of retirement from service,

the Release Medical Board (RMB) held at Military Hospital, Bareilly on 26.11.2016 assessed his disabilities (i) **'PRIMARY HYPERTENSION (I-10.0)'** @30% for life and **'CORONARY ARTERY DISEASE (NON CRITICAL) (I-77)'** @30% for life, **composite disabilities @50% 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 29.12.2016. The applicant preferred First Appeal which too was rejected vide letter dated 27.11.2017 which was communicated to the applicant vide letter dated 11.12.2017. The applicant preferred Second Appeal which too was rejected vide letter dated 15.01.2019 which was communicated to the applicant vide letter dated 23.01.2019. 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 commissioning, 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 commissioning in Army. The diseases of the applicant were contracted during the service, hence they are 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 and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that composite disabilities of the applicant @50% for life have been regarded as NANA by the RMB, hence the applicant is not entitled to disability element of disability pension. He further submitted that Rule 5 of Entitlement Rules to Casualty Pensionary Awards, 2008 provides that *“The medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital disease may manifest later in life, irrespective of service conditions. The mere fact that disease has manifested during military service does not per se establish attributability to or aggravation by military service.”* 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 element of 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 denied attributability to the applicant only by endorsing that the disabilities '**PRIMARY HYPERTENSION (I-10.0)**' and '**CORONARY ARTERY DISEASE (NON CRITICAL) (I-77)**' are neither attributable to nor aggravated (NANA) by service on the ground of onset of disabilities on 15.08.2025 while posted in Peace location (Bareilly), 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 element of 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 military service. The applicant was commissioned in Indian Army on 09.06.1984 and the disabilities have started after more than 31 years of Army service i.e. on 15.08.2015. 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 both the

disabilities of the applicant should be considered as aggravated by military 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 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."*

9. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

10. 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) SLR 445, 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.”

11. As such, in view of the decision of Hon'ble Supreme Court in the cases of ***Union of India and Ors vs Ram Avtar & ors (supra)*** and ***Shiv Dass (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @50% for life to be rounded off to 75% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

12. In view of the above, the **Original Application No. 167 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. Both the disabilities of the applicant are held as aggravated by Army Service. The applicant is entitled to get disability element @50% for life which would be rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 75% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 09.02.2023. 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.

13. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 15 April, 2024

AKD/-