

Court No. 1 (Taken up in Court No.2)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 620 of 2022**

Tuesday, this the 20th day of December, 2022

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

No. 5846736F Ex. L/Nk. Gupta Bahadur Malla, Son of Gunja Bahadur Malla, resident of Village – Foolbare Tol, Post Office – Chormara, District – Nawal Prasi, State – Nepal.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, Records, Defence Security Corps, Mill Road, Burnacherry, Post Office – Kannur, District – Kannur, Kerala, Pincode-670013.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

.....Respondents

Ld. Counsel for the : **Shri Ramesh Chandra Shukla**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

- (a) To issue/pass an order or direction to the Respondents to summon and quash the impugned order, if any, being arbitrary and illegal.*
- (b) to issue/pass an order or direction to the respondents to grant disability pension to the applicant @30% for life which after rounding off will be @50% for life from the next date of discharge i.e. from 01.07.2020.*
- (c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (d) Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in the 9 Gorkha Rifles of Indian Army on 11.07.1988 and discharged on 31.03.2007 after rendering 18 years, 08 months and 21 days of service. He was re-enrolled in Defence Security Corps (DSC) on 26.09.2011 and discharged from DSC service on 30.06.2020 (AN) after rendering 08 years, 09 months and 05 days of service in Low Medical Category under Rule 13 (3) Item III (iii)(a)(i) of

the Army Rules, 1954. At the time of discharge from DSC service, the Release Medical Board (RMB) held at 28 Wing Air Force on 20.04.2020 assessed his disability '**CAD-STE AWWMI S/P NON OBSTRUCTIVE CORONARIOES SLOW FLOW (OLD) (I 20.09) (Z09.0)**' @30% for life and 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 10.12.2020. 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/DSC and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army/DSC. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military/DSC 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 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for life has been regarded as NANA by the RMB, hence as per Regulation 81 (a) of the Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled to disability element of 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 disability of the applicant is attributable to or aggravated by Military/DSC 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 disability '**CAD-STE AWMI S/P NON OBSTRUCTIVE CORONARIOES SLOW FLOW (OLD) (I 20.09) (Z09.0)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in July, 2014 while posted in Peace location (Visakhapatnam), 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 military service. The applicant was enrolled in Indian Army on 11.07.1988, re-enrolled in DSC on 26.09.2011 and the disability has started after more than 25 years of Army & DSC service i.e. in July, 2014. 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 military/DSC service.

8. 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.

9. 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*** (Civil appeal No 418 of 2012 decided on 10th December 2014) in which 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 and 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 @30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge from DSC service.

10. In view of the above, the **Original Application No. 620 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 disability of the applicant is held as aggravated by Army/DSC Service. The applicant is entitled to get disability element @30% for life which

would be rounded off to 50% for life from the next date of his discharge from DSC service. The respondents are directed to grant disability element to the applicant @ 50% for life from the next date of his discharge from DSC service. 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.

12. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 20 December, 2022

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