

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 703 of 2022**Thursday, this the 15th day of December, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Lt Gen Rakesh Kumar Anand, Member (A)”**

No. TJ-4977K Ex Sub Girand Singh
 S/o Shri Ram
 R/o Village – Line Gaon Khana, Post Office – Yakutganj,
 Distt – Farrukhabad (UP) – 209749

..... Applicant

Ld. Counsel for the Applicant: **Shri Virendra Kumar Gupta**, Advocate
 Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi-110011.
3. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (Prayagraj) – 211014.
4. The Officer-in-charge, Jat Regiment, Bareilly (UP) – 243001.

..... Respondents

Ld. Counsel for the Respondents: **Shri Rajeev Narayan Pandey**,
 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) Having summoned the original records from the respondents, the order passed by PCDA (P) Allahabad regarding disability pension claim, and Appellate

Committee of First Appeal (ACFA) dated 21 Dec 2021 be quashed/set aside.

- (B) To issue suitable orders or directions to the respondents for grant of disability pension and rounding off it 50% from date of discharge from service in pursuance of judgment passed by Hon'ble Apex Court in the matter of Dharambir Singh versus Union of India & others and Union of India and others versus Ram Avtar & Others.*
- (C) To pay the arrears of disability pension alongwith suitable rate of interest as deemed fit, just and proper by this Hon'ble Tribunal.*
- (D) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant."*

2. Briefly stated, applicant was enrolled in the Territorial Army on 30.09.1993 and discharged on 31.07.2020 in Low Medical Category under Rule 14 (c) of Territorial Army Regulations, 1948. At the time of discharge from service, the Release Medical Board (RMB) assessed his disabilities (i) '**PRIMARY HYPERTENSION**' @ 30% for life and (ii) '**OBESITY**' @ 5% for life, Composite disabilities @ 32% 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 by the respondents vide JAT Records communication order dated 04.12.2020. The applicant preferred First Appeal which was rejected vide letter dated 21.12.2021 and second appeal was also rejected vide order dated 22.09.2022. 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 diseases at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence they are attributable to and aggravated by Military Service. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316 and pleaded that applicant be granted disability pension duly rounded off to 50% in view of the Hon'ble Apex Court judgment in the case of ***Union of India vs. Ram Avtar***, decided on 10.12.2014.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant, composite @ 32% for life have been regarded as NANA by the RMB and not connected with service. Hence, under the provisions of Regulation 173 of pension Regulations for the Army, 1961 (Part-1) and Regulation 81 of Pension Regulations for the Army, 2008 (Part-1), 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 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 composite disabilities of the applicant are neither attributable to nor aggravated (NANA) by service on the ground of onset of disability while posted in peace location and not connected with military service, therefore, applicant is not entitled to 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 30.09.1993 and the disabilities have started after more than 26 years of Army service i.e. in March 2020. 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 first disability (Primary Hypertension) of the applicant should be considered as aggravated by military service.

8. As far as second disability (Obesity) is concerned, we are in agreement with the opinion of RMB that obesity is caused due to personal dietary habits and not related to military service, hence, second disability of the applicant is treated as NANA.

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*** 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 pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant for his

first disability (Primary Hypertension) from the next date of his discharge from service.

10. In view of the above, the Original Application 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. The first disability (Primary Hypertension) of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @ 30% for life for first disability (Primary Hypertension) 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 @ 50% for life from the next date of his discharge from 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.

(Lt Gen Rakesh Kumar Anand)
Member (A)

Dated : December, 2022
SB

(Justice Umesh Chandra Srivastava)
Member (J)