

Court No. 1 (Taken up in Court No. 3)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 780 of 2022**

Wednesday, this the 21st day of December, 2022

“Hon’ble Mr. Justice Anil Kumar, Member (J)”

“Hon’ble Lt. Gen. Rakesh Kumar Anand, Member (A)”

JC 666022W Ex. Subedar (Hony Sub Maj) Shyam Narain Prasad
S/o Late Bihari Lal Pal, R/o Village – Holapur, Po- Shivpur, District –
Varanasi.

..... Applicant

Ld. Counsel for the : **Shri Rohit Kumar**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi -110011.
2. Chairperson, 1st Appellate Committee on Pensions Additional Director General Personal Services (PS-4) Adjutant General’s Branch Room No. 416, 4th Floor, Integrated Headquarter of Ministry of Defence (Army), Army Headquarters, DHQ PO, New Delhi – 110011.
3. Commandant-cum-Chief Record Officer and Centre ASC Centre (S) and Records Bangalore.

.....Respondents

Ld. Counsel for the : **Shri Bipin Kumar Singh**, 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) *Quash the rejection order of the ASC (S) Records Bangalore letter No.JC666022/1st Appeal /DP-II dated 03 Jun 2020 rejecting the First Appeal of the applicant with all consequential benefits to the applicant.*

- (b) *Direct the respondents to pay the disability pension to the applicant @30% with effect from 31 Aug 2016 dated of discharge of the applicant.*
- (c) *To direct the respondents to grant the benefits of rounding off to the applicant as catered in the paragraph 7.2 of the Govt. of India, Ministry of Defence, New Delhi policy letter No.1(2)/97/1/D(Pen-C) dated 31 Jan 2001, effective from 01 Jan 1996.*
- (d) *To direct the respondents to conduct Re-Survey Medical Board to assess the percentage of disability of the applicant.*
- (e) *To direct the respondents to decide the statutory first appeal of the applicant bearing No. D/SP/AAFN/D?SNP dated 15 Feb 2020 within a time frame to be fixed by this Hon'ble Tribunal preferably one month.*
- (f) *To issue any other or direction considered expedient and in the interest of justice and equity.*
- (g) *Award cost of petition.*

2. Briefly stated, applicant was enrolled in the Indian Army on 03.07.1987 and discharged on 31.08.2016(A/N) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (ii)(a)(i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 167 Military Hospital on 19.05.2016 assessed his disabilities (i) '**CAD NSTEMIP/PTCA WITH STENT (TAXUS 3 x 16) TO LAD ET =50% (I.25.9)**' @ 30% for life (ii) '**OBESITY (E-66%)**@1-5% for life **Composite disabilities 30% 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 09.08.2016. 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 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 @ 30% duly rounded off to 50% for life.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant @ 30% for life has been regarded as NANA by the RMB, hence as per Regulation 179 of Pension Regulations for the Army, 1961 (Part – I) and Regulation 53(a) of 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 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 invalidated 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 first disability, '**CAD NSTEMIP/PTCA WITH STENT (TAXUS 3 x 16) TO LAD ET =50% (I.25.9)**' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in 29 Sep 2014 while posted in Peace location, 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 03.07.1987 and first disability has started after more than 27 years of Army service i.e. on 29 Sep 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 first disability of the applicant should be considered as aggravated by military service.

8. As far as second disability (Obesity) of the applicant 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. 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.

10. 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.

11. 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, the 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.”

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (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 pension @ 30% for life to be rounded off to 50% for life may be

extended to the applicant from three preceding years from the date of filing of the Original Application.

13. In view of the above, the **Original Application No. 780 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 first disability (CAD) of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element of first disability @30% for life which would be rounded off to 50% for life from the next date of discharge from service. The respondents are directed to grant disability element to the applicant @ 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 19.09.2022. 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.

14. No order as to costs.

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

(Lt. Gen. Rakesh Kumar Anand)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 22 December, 2022
Ashok/SB