

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 775 of 2023

Thursday, this the 21st day of December, 2023

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Ex. Nk. Shiv Singh Dangi (15786571-Y) S/o Shri Babu Lal Dangi,
R/o H. No. 64, Village & Post – Bilsuri, Tehsil – Sikandrabad,
District – Bulandshahr, Uttar Pradesh-203205.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate
Holding brief of
Wg. Cdr. Ajit Kakkar (Retd.), Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110001.
2. The Chief of the Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi-110001.
3. Senior Record Officer, Army Air Defence, Gopalpur Berhampur, Orissa-761002.
4. PCDA, Draupadi Ghat, Allahabad, Utttar Pradesh-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Gyan Singh**, Advocate
Central Govt. Counsel
Assisted by **Major Uma Yadav**,
Departmental Representative

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. *To direct the respondents to bring all service and medical records of the Applicant, including the RMB.*
- b. *To set aside the Rejection letter dated 09.12.2021;*
- c. *To grant disability pension to the Applicant from the date of discharge i.e. 30.11.2021.*
- d. *To direct the Respondents to grant broad banding of the disability pension w.e.f. 30.11.2021.*
- e. *To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the Applicant.*
- f. *To direct the respondents to pay arrear of disability pension and broad banded disability pension along with interest @8% from the date of discharge i.e. 30.11.2021.*
- g. *To grant such other relief appropriate to the facts circumstances of the case as deemed fit and proper.*

2. Briefly stated, applicant was enrolled in the Indian Army on 26.07.2004 and discharged on 30.11.2021 in Low Medical Category being unwilling to continue further in service under Rule 13 (3) Item III (i) (a) (i) of the Army Rules, 1954 as amended vide SRO 22. Dated 13.05.2010 and IHQ of Mod (Army) letter dated 26.09.2017. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jhansi on

27.09.2021 assessed his disability '**LEFT PUJ OBSTRUCTION (OPTD) (N13)**' @20% 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 09.12.2021. The applicant preferred First Appeal which too was rejected vide letter dated 09.11.2022 which was communicated to the applicant vide letter dated 28.11.2022. The applicant preferred Second Appeal dated 21.12.2022 which too was rejected vide letter dated 24.08.2023 which was communicated to the applicant vide letter 14.09.2023. 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 disease of the applicant was contracted during the service, hence it is 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 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @20% for life has been regarded as NANA by the RMB, hence as per Regulation 53(a) of

the Pension Regulations for the Army, 2008 (Part-I) which provides that *“An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”* the applicant is not entitled to disability element of disability pension. He further submitted that since the applicant was placed in low medical category for the aforesaid disability with effect from 06.10.2012 and to retain in his service, it was necessary to grant sheltered appointment subject to availability of suitable appointment, as per his disability and willingness. As the applicant was willing to continue further service in an alternative appointment on being placed in a permanent low medical category and his retention in service was recommended by the then Commanding Officer of the unit in public interest with effect from 06.10.2012. On further review, the applicant was continued in low medical category for a period of two years with effect from 20.11.2020 to 20.11.2022. As the applicant was not willing to continue further in alternative appointment on being placed in permanent low medical category and his retention was not recommended by the then Commanding Officer of the Unit in public interest with effect from 20.11.2020. As

per Para 9 of Additional Directorate General of Manpower/MP-3 (PBOR), Integrated Headquarters of Ministry of Defence (Army) letter dated 30.09.2010 "Sheltered appointment will be formally withdrawn with effect from the date of approval of discharge by the competent authority and discharge of the individual will be carried out within six months of the date of approval. Accordingly, Call Up Order was issued by the Army Air Defence Records vide letter dated 16.06.2021 to discharge the applicant from service with effect from 30.11.2021. 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 three folds:-

- (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled to disability pension being a case of discharge for unwilling to continue further in service in alternative appointment?
- (c) Whether the applicant is entitled for the benefit of rounding off the 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 '**LEFT PUJ OBSTRUCTION (OPTD) (N13)**' is neither attributable to nor aggravated (NANA) by service on the ground that disease is due to congenital weakness of the wall the PUJ in addition to, there is no history of Renal/Urinary calculi, 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 cryptic, not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 26.07.2004, the disability has started after about seven years of Army service i.e. on 11.03.2011 and discharged from service on 30.11.2021. 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 service.

8. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on the ground of unwilling to continue further in 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 invalidated 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. 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. 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 (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 element of disability pension @20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

12. In view of the above, the **Original Application No. 775 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service. The applicant is entitled to get disability element @20% 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 @20% 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.

13. No order as to costs.

14. Major Uma Yadav, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 21 December, 2023

AKD/-