

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****TRANSFERRED APPLICATION No. 56 of 2022**Wednesday, this the 20<sup>th</sup> day of December, 2023**“Hon’ble Mr. Justice Anil Kumar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Dharam Nath Singh (Sep/AA, 6787915) S/o Mahadev Singh, R/o Korar,  
PO Basantpur, Bansohi, Shivan, Basantpur, Bihar-841406.

Substituted by :-

- 1.1 Ajay Kumar Singh, S/o Late Dharamnath Singh, R/o D-330,  
Madipur Colony, Paschim Vihar, West Delhi, Delhi -110063.
- 1.2 Ravindar Singh, S/o Late Dharamnath Singh, R/o 148, Kodar  
Basantpur, Siwan, Bihar-841206.
- 1.3. Sheela Devi D/o Late Dharamnath Singh, W/o Awadhkishor  
Singh, R/o Konrar, Siwan, Basantpur, Bihar-841406.
- 1.4 Suman Devi D/o Late Dharamnath Singh, W/o Rajiv Kumar, R/o  
Hariharpur Lalgah, Siwan, Harihar Pur, Lalgah, Bihar-841434.
- 1.5 Bijay Kumar Singh, S/o Late Dharamnath Singh, R/o Konrar,  
Siwan, Bihar-841406.

**..... Applicants**

Ld. Counsel for the : **Shri Anurag Singh**, Advocate.  
Applicants

Versus

1. Union of India, through Secretary, Ministry of Defence, Govt. of  
India, New Delhi.
2. Controller of Defence Accounts (Pension), Allahabad, Draupadi  
Ghat, Allahabad -211014.
3. Director (Pension), Ministry of Defence, New Delhi.
4. Director of Medical Services, DMS-3, Adjutant General's Branch,  
Army Headquarters, DHQ, PO, New Delhi -110011.

5. Officer In-Charge, Army Medical Corps Office Lucknow.

.....Respondents

Ld. Counsel for the Respondents.

: **Shri Ram Saran Awasthi**, Advocate  
Central Govt. Standing Counsel  
Assisted by **Maj. Uma Yadav**,  
Departmental Representative

**ORDER**

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

1. Civil Misc. Wit Petition No. 415845 of 2017 has been filed, before the Hon’ble High Court of Judicature at Allahabad, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 56 of 2023, for the following reliefs:-

1. *A writ order/direction in the nature of mandamus commanding the respondents to grant disability pension in favour of petitioner as per his entitlement.*
2. *Any other suitable writ, order or direction which this Hon’ble Court may deem fit and proper in the facts of the case.*

2. Briefly stated, father of applicants was enrolled in the Army Medical Corps of Indian Army on 23.01.1953 and Invalided out from service on 14.08.1961 (AN) in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Agra on 17.05.1961 assessed his disability ‘**FUNCTIONAL DYSPEPSIA**’ @30%

for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicants' father's claim for grant of disability pension was rejected vide letter dated 06.12.1961 which was communicated to the father of applicants vide letter 14.02.1962. The father of applicants preferred an application dated 28.07.1972 for issue duplicate discharge certificate which was issued to him vide letter dated 21.08.1972. The father of applicants preferred application dated 13.09.1972 which was replied by the respondents vide letter dated 29.09.1972. The father of applicants preferred Petitions dated 01.03.1984 and 22.10.1984 which too were rejected vide letter dated 12.11.1984. The father of applicants preferred application dated 28.01.1986 for providing some documents which were provided vide letter dated 14.02.1986. The father of applicants preferred application dated 12.08.1998 which was replied by the respondents vide letter dated 27.08.1998. The father of applicants preferred Legal Notice through his Counsel but of no avail. It is in this perspective that the father of applicants has preferred the present application (Writ Petition).

3. During the pendency of instant case original applicant i.e. Dharam Nath Singh has died on 25.05.2021, hence, being sons/daughters applicants have been substituted on his place.

4. Learned Counsel for the applicants pleaded that at the time of enrolment, the father of applicants 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 father of applicants 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 father of applicants be granted disability pension.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the father's of applicants @30% for life has been regarded as NANA by the IMB, the father of applicants is not entitled to disability pension. He further accentuated that the father of applicants is not entitled to disability pension in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I), which stipulates that, *"Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the father of applicants was informed about the rejection/non-entitlement of disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of Regulation 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually

rendered and required for grant of service element of disability pension/invalid pension is ten years, but in the instant case the father of applicants has put in only 08 years, 06 months and 22 days of service. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding 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 father of applicants is attributable to or aggravated by Military Service?
- (b) Whether the father of applicants is entitled for the benefit of rounding off the disability element of disability pension?

7. 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)."*

8. In view of the settled position of law on attributability, we find that the Invaliding Medical Board (IMB) has denied attributability to the father of applicants only by endorsing that the disability '**FUNCTIONAL**

**DYSPEPSIA** is neither attributable to nor aggravated (NANA) by service ***“History of ailment of 4 yrs duration only”***, therefore, father of applicants is not entitled to disability pension. However, we find that at page 29 of the Counter Affidavit i.e. IMB proceedings in column a(i) against question *“that the disease existed before enrolment and/or”* the IMB endorsed ***“No”*** and against the column a(ii) at the same page against question *“that the individual at the time of enrolment was not fit for the service demanded of him in the medical category”* the IMB endorsed ***“He was fit”***. Hence, considering the facts and circumstances of the case, we are of the opinion that the reasoning of Invaliding Medical Board for denying disability element of disability pension to father of applicants is cryptic, not convincing and doesn't reflect the complete truth on the matter. The father of applicants was enrolled in Indian Army on 23.01.1953 and the disability has started after more than about six years of Army service i.e. on 16.12.1958 and he was invalided out from service on 14.08.1961. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the father of applicants in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the disability of the father of applicants should be considered as aggravated by military 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 10<sup>th</sup> January 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. 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.”*

12. 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(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 father of applicants from three preceding years from the date of filing of the Transferred Application (Writ Petition) till the death of father of applicants - Dharam Nath Singh i.e. 25.05.2021.

13. In view of the above, the **Transferred Application No. 56 of 2022** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicants' father's claim for grant of disability element of disability pension, are set aside. The disability of the father of applicants is held as aggravated by Army Service. Dharam Nath Singh, father of applicants, is entitled to get disability element @30% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Transferred Application (Writ Petition) till his death i.e. 25.05.2021. The respondents are directed to grant disability element to Dharam Nath Singh, the father of applicants, @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Transferred Application (Writ Petition) till his death i.e. 25.05.2021 and pay to the applicants accordingly. The date of filing of Transferred Application (Writ Petition) is 28.11.2017. 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. 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.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 20 December, 2023

AKD/-