

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 696 of 2023

Wednesday, this the 04th day of December, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

No. 1260351 Ex. Nk. Chhun Bahadur S/o Bir Bahadur R/o H.
No.138 Shiv Mandir Chandra Nagar, Nai Basti, P.O. – Arhat
Bazar, Dehradun, PIN-248001.

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated Head Quarter of Ministry of Defence, South Block, New Delhi-110001.
3. The Officer-In-Charge Records, Raksha Suraksha Corps Records, Defence Security Corps, PIN No. 901277, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. Central Govt. Standing Counsel

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.

- (I) To set aside/quash rejection of disability pension if any after summoning the copy of rejection of disability pension.*
- (II) To issue order or direction to respondents to grant disability pension along with service element to the applicant from the date of discharged from service.*
- (III) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (IV) Cost of the appeal be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in Regiment of Artillery of Indian Army on 28.05.1973 and discharged on 30.11.1988. The applicant was re-enrolled in Defence Security Corps (DSC) on 27.05.1989 and discharged from DSC service on 30.06.2004 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. The applicant is in receipt of dual Service Pensions i.e. for the service rendered by the applicant in Army as well as in DSC. Before discharge from DSC service, the Release Medical Board (RMB) held at Kanpur on 18.02.2004 assessed his disability ‘**IHD (OLD)**’ @30% for life and opined the disability to be neither attributable to

nor aggravated (NANA) by service. The applicant was not granted disability element of disability pension. The applicant had filed Original Application No. 259 of 2013, *Chhun Bahadur Versus The Union of India and Others*, for grant of second service pension after condoning shortfall in qualifying service which was allowed vide order dated 13.09.2017 and direction was issued for granting second service pension. Accordingly, the applicant was granted second service pension for the services rendered by him in DSC. Thereafter, the applicant has filed Original Application No. 696 of 2017 which was dismissed by this Tribunal vide order dated 18.01.2021 on the ground that applicant in Original Application No. 259 of 2013 ought to have included whole of the claim i.e. second service pension and disability pension to which the applicant was entitled in respect of the same cause of action i.e. discharged from DSC service or ought to have sought the leave of the Tribunal to file a fresh Original Application which he did not do. The applicant had preferred Review Application No. 8 of 2021 which too was dismissed by this Tribunal vide order dated 03.06.2021.

3. Against the orders passed by this Tribunal, the applicant had preferred Writ – A No. 25375 of 2021, *No. 1260351 Ex Nk Chhun Bahadur Vs. Armed Forces Tribunal, Regional Bench through Registrar and Others* before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow which was allowed vide order dated 23.08.2024 and the Judgment dated 18.01.2021 as

also order dated 03.06.2021 passed by this Tribunal were set aside and the Original Application No. 696 of 2017 has been restored and this Tribunal was directed to proceed to consider and decide the Original Application as per law at the earliest, say, within a period of six months. It was also directed that *“If the delay has not been condoned, then, the Tribunal shall also consider the question of limitation in terms of Section 22 of the Armed Forces Tribunal Act, 2007. If it has been condoned, then, of course the said issue shall not be opened but the Tribunal shall consider the merits of the matter keeping in the mind the observations made hereinabove.”*

4. In compliance of the order dated 23.08.2024 passed by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, in Writ – A No. 25375 of 2021, *No. 1260351 Ex Nk Chhun Bahadur Vs. Armed Forces Tribunal, Regional Bench through Registrar and Others* the Original Application is being considered and decided. Be it mentioned that the delay has already been condoned by this Tribunal vide order dated 18.12.2017.

5. Learned Counsel for the applicant pleaded that at the time of re-enrolment in Army/DSC, 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 re-enrolment in Army/DSC. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Army/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%.

6. 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 policy laid down in Regulation 179 of Pension Regulations for the Army, 1961 (Part-I) "a JCO/OR retired on completion of terms of engagement or on completion of service limits, if suffering on retirement from a disability attributable to or aggravated by military service and so recorded by service medical authority, may, at the discretion of the competent authority, be granted in addition to service pension admissible, a disability element as if he had been retired on account of the disability". He further submits that in terms of 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 thus pleaded for dismissal of the Original Application.

7. 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 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?

8. 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)."*

9. 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 'IHD (OLD)' is neither attributable to nor aggravated (NANA) by service, therefore, applicant is not

entitled to disability element of disability pension. However, considering the facts and circumstances of the case, we are of the view that Release Medical Board's opinion without assigning any specific reason for denying the disability element of disability pension to applicant is not convincing and doesn't reflect the complete truth on the matter. The applicant was enrolled in Indian Army on 28.05.1973, discharged from Army on 30.11.1988, re-enrolled in DSC on 27.05.1989 and the disability has started after more than 20 years of Army/DSC service i.e. on 01.11.1993. 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.

10. 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. 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.”

11. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/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.

12. 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.”

13. 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/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 three preceding years from the date of filing of the Original Application.

14. In view of the above, the **Original Application No. 696 of 2017** deserves to be partly allowed, hence **partly 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 w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 06.09.2017. 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.

15. No order as to costs.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 04 December, 2024

AKD/-